



CHRISTCHURCH CITY COUNCIL AGENDA

THURSDAY 27 SEPTEMBER 2007

AT 9.30AM

IN THE COUNCIL CHAMBER, CIVIC OFFICES

Council: The Mayor, Garry Moore (Chairperson).
Councillors Helen Broughton, Sally Buck, Barry Corbett, David Cox, Anna Crighton, Carole Evans,
Pat Harrow, Bob Parker, Bob Shearing, Gail Sheriff, Sue Wells and Norm Withers.

ITEM NO	DESCRIPTION
1.	APOLOGIES
2.	CONFIRMATION OF MINUTES - COUNCIL MEETING OF 20.9.2007
3.	DEPUTATIONS BY APPOINTMENT
4.	PRESENTATION OF PETITIONS
5.	TAYLORS MISTAKE AND BOULDER BAY BACHES
6.	ADOPTION OF CHRISTCHURCH CITY COUNCIL RURAL FIRE AUTHORITY FIRE PLAN
7.	TRAM EXTENSION STUDY
8.	REPORT OF HEARINGS PANEL ON CHRISTCHURCH CITY FIRE SAFETY BYLAW 2007
9.	NOTICES OF MOTION
10.	QUESTIONS
11.	RESOLUTION TO EXCLUDE THE PUBLIC

27. 9. 2007

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- 1. APOLOGIES**

- 2. CONFIRMATION OF MINUTES - COUNCIL MEETING OF 20.9.2007**
Separately circulated.

- 3. DEPUTATIONS BY APPOINTMENT**

- 4. PRESENTATION OF PETITIONS**

5. TAYLORS MISTAKE AND BOULDER BAY BACHES

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officer responsible:	Legal Services Manager
Author:	Ian Thomson, Solicitor

PURPOSE OF REPORT

1. In September and December 2006 seminars were held for councillors to discuss with them the current situation with regard to the baches at Taylors Mistake and Boulder Bay and to explore options for reaching a long term solution of the bach issue. The Legal Services Unit was instructed to prepare a full report on those options for the purpose of enabling the Council to make a decision on the future of the baches.

EXECUTIVE SUMMARY

2. In 2003 the Environment Court considered proceedings brought by parties interested in how the City Plan provides for the future of the baches at Taylors Mistake and Boulder Bay. Many years spent trying to resolve the issues raised by continued existence of the baches culminated in the Court's decision.
3. In summary, the Court decided that 31 of the baches should remain and that 14 should be removed. The owners of the baches to be removed were to be offered the opportunity to build replacement structures on an area of land zoned for that purpose.
4. The Court's decision is reflected in the City Plan. However, the Council now has to decide whether or not it will enforce the removal of baches and/or grant licences in respect of those scheduled to remain.
5. For the reasons set out in this report, Council staff recommend that the Council:
 - (a) Require bach owners to take the appropriate steps to create the Taylors Mistake Bach zone ("TMB zone").
 - (b) Require the owners of baches stated in the City Plan to be removed to remove them and give them the opportunity to build new baches in the TMB zone.
 - (c) Agree to grant licences to the owners of baches scheduled in the City Plan to remain.

FINANCIAL IMPLICATIONS

6. There will be costs incurred by the Council in bringing the bach issues to a satisfactory conclusion. This will include staff time and fees paid to external advisers.
7. There will be further staff time required to complete the transfer of the land owned by the Taylors Mistake Association to the Council and the implementation of the TMB zone. External advice may be required from time to time in respect of these matters.
8. It will also be necessary for Council staff to monitor the removal of baches and the building of new ones in the TMB zone. This will include ensuring that appropriate consents are obtained.
9. So far as the licences to occupy are concerned, these will need to be completed and signed on behalf of the Council. The Legal Services Unit expects that there will be opposition to the Council's decision to issue licences and the possibility cannot be ruled out that there will be a legal challenge to this decision. The effect of that will be to delay the issue of licences and increased costs incurred by the Council.

Do the recommendations of this report align with 2006-16 LTCCP budgets?

10. Although no specific provision has been made in the budgets it is likely that this will be necessary if the Council becomes involved in High Court proceedings.

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LEGAL CONSIDERATIONS

11. These have been covered in full in the background to this report.

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

12. Yes.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

13. The Council has an obligation to maintain the integrity of its City Plan. If a decision is made that is in accord with the recommendations of this report then steps will be taken to remove the baches scheduled to be removed.

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

14. Other than identifying the need to comply with the provisions of the City Plan, the answer to this is "no".

ALIGNMENT WITH STRATEGIES

15. The Council has already incorporated the conclusions reached by the Environment Court in 2003 in the Council's City Plan. To the extent that this creates an expectation that the Council will enforce the Plan's provisions, then the recommendations in the report are in line with strategies adopted by the Council.

Do the recommendations align with the Council's strategies?

16. Yes.

CONSULTATION FULFILMENT

17. Over many years there has been extensive consultation with parties interested in or affected by the Council's decision with regard to the future of the Taylors Mistake and Boulder Bay baches. This has included private and public meetings, deputations, the deliberations of various Council-initiated working parties and hearing panels, reports from Commissioners, an extensive Environment Court hearing in which all interested groups and individuals took part and a number of seminars some of which have been open to the public.

18. There have also been discussions with groups in favour of or opposing the retention of baches and proponents of the establishment of a penguin colony at Boulder Bay, a site visit and a seminar for elected members.

19. There were no appeals from the Environment Court's decision. The views expressed since then reflect the positions taken by various individuals and groups at the hearing. Briefly stated, these have been as follows:

(a) Taylors Mistake Association (Inc)

(i) In addition to supporting the ongoing presence of the baches the Environment Court found no legal impediment to the Council scheduling existing baches and creating a new bach zone for those that would be relocated.

(ii) Whilst it would prefer for all the baches to stay where they are, the Taylors Mistake Association is committed to supporting the Council's implementation of the Environment Court's decision.

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- (b) Brent Gilpin
 - (i) He would like Councillors to consider whether an improved outcome would be achieved by scheduling more of the existing baches to remain where they are.
- (c) White Flipped Penguin Trust
 - (i) A penguin colony can be established at Boulder Bay and function as an eco-tourism experience (with positive conservation advocacy, revenue for the scientific study of the species, tourism development and public access outcomes) with the removal of the central bach (number 6) only.
 - (ii) Furthermore, the Trust would hold no objection to the relocation of that bach elsewhere in the bay, but sufficiently at the edge of the bay that it caused minimal impact to public access and enjoyment.
- (d) Department of Conservation
 - (i) The White Flipped Penguin Trust has worthy conservation aims and has proposed a project on public conservation land which the Department supports.
- (e) Save the Bay Limited
 - (i) It is quite evident that the eight baches on the main beach north of the surf club, and which are unscheduled, interfere with the enjoyment of the beach by the public. The removal of these baches is a priority to mitigate against potential health hazards from pollution.
 - (ii) The Hobson Bay baches (scheduled to remain) discharge their sullage directly onto the foreshore.
 - (iii) Access along the base of the cliff at high tide becomes difficult in places and this is further restricted by the presence of some baches. The restriction caused by the baches and their general occupation is a public nuisance.
 - (iv) It is incumbent upon the Council to take immediate action towards the removal of baches 28 to 33 that the Court found incompatible with the use of the beach by the public.
 - (v) Some of the occupation of baches 35 to 46 (scheduled to remain) does at times cause a nuisance to the public.
 - (vi) The occupation of a number of the Boulder Bay baches can be considered a public nuisance.
- (f) O Snoep
 - (i) The right of passage over a road is one possessed by the public, not the Council.
 - (ii) The public enjoys a measure of priority when it comes in conflict with private interests such as the baches.
 - (iii) The reason why the road was vested in the Council by the Crown was for the purpose to enable the Council to facilitate passage for its citizens and the use of the road by them.

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20. Other views expressed also supported the removal of bach number 6 at Boulder Bay to facilitate the establishment of a penguin colony, and the Council making a decision that reflects the conclusions reached by the Environment Court. Councillors who attended the seminar held in December 2006 may recall discussing the option of allowing all existing baches to remain and granting the owners licences to occupy. This is referred to later in the report.
21. The report endeavours to collate the information obtained through the consultation process and to present the practicable options open to the Council.

STAFF RECOMMENDATION

It is recommended that the Council resolve to:

- (a) Give notice to the Taylors Mistake Association that it must take immediate steps to provide a concept plan for the Taylors Mistake Bach zone and complete the transfer of land to the Council as referred to in the Environment Court decision in 2003.
- (b) Require the owners of baches stated in the City Plan to be removed to remove them and give those owners the opportunity to build new baches in the Taylors Mistake Bach zone.
- (c) Grant licences to occupy in respect of the baches scheduled in the City Plan to remain.
- (d) Authorise Council staff to negotiate and to enter into licences to occupy with the owners of the baches scheduled to remain, substantially on the terms and conditions set out in the draft form of licence attached to the staff report and note that if agreement cannot be reached with bach owners on suitable terms and conditions then the matter is to be brought back to the Council for a further decision.
- (e) Note that the Council's decision to grant licences in respect of baches at Taylors Mistake and Boulder Bay is not an indication that such licences will automatically be granted in other situations where unauthorised structures have been built on land vested in the Council as legal road.

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BACKGROUND (THE ISSUES)

Background Information

22. Attached to this report as Annexure A is background information on the status of the land on which the baches are situated and a chronology of events. This has been taken from the Environment Court's 2003 decision. Although this information has been provided before, distributing it again may assist Councillors with putting the bach issue into context when considering the recommendations of this report.

Environment Court Decision

23. The recommendations set out in this report are based on the decision of the Environment Court in 2003. The conclusions reached by the Court are briefly stated in this section.
24. The Court considered proceedings brought by Save the Bay Limited, O Snoep and Royal Forest and Bird Protection Society of NZ Inc that sought to amend provisions in the then proposed City Plan. Taylors Mistake Association Inc and Canterbury Regional Council were also joined as interested parties.
25. The plaintiffs sought removal of provisions in the Plan that allowed some of the baches at Taylors Mistake to be removed and replaced elsewhere and others to remain as a permitted activity. The Court also addressed issues such as the historic and heritage value of the baches, the requirement to enhance public access to the coastal marine area and the visual amenity and quality of the environment. It concluded that the existence of a penguin colony and parade and the scheduling of the baches at Boulder Bay were not necessarily incompatible, having regard to the Council's ability to control both the use and the conditions of use of the buildings.
26. The Environment Court found that the natural character of the area was higher with the baches than it would be if they were removed and the land merely retained as pastoral. At Taylors Mistake, the Court decided that 31 of the baches should remain on a scheduled basis in the City Plan. "Scheduled" means that the location and use of the baches are permitted and defined in a schedule to the Plan. The baches to be removed were those most visually prominent occupying the most seaward portion of the Bay. The Court's decision did not include the removal of any of the baches at Boulder Bay.
27. The reasoning behind the Court's decision was that the scheduling of the baches would allow the Council to control the future use of the buildings, reconstruction, the exterior and other similar matters through the standards that the City Plan imposed. It also recognised the heritage values of the baches and for the enhancement that they bring to the quality of the environment.
28. The Environment Court upheld the proposed provision for the bach relocation area, the TMB zone, in the City Plan. Overall, it found that the correct balance had been achieved between the significant number of issues that had to be addressed in evaluating both the scheduling of the baches and the creation of the TMB zone.
29. The parties to the proceedings agreed on planning maps reflecting the conclusions reached by the Court and these were included in the City Plan, along with the description and purpose of the TMB zone. The creation of the TMB zone has been deferred pending the transfer of land owned by the Taylors Mistake Association to the Council and preparation of a concept landscaping plan.
30. There were no appeals lodged following the Court's decision. The subdivision required to create the TMB zone can proceed on a non-notified basis and does not require the written consent of any interested parties, provided that the subdivision complies with the requirements of the TMB zone. The only matters outstanding before the TMB zone can be established are the transfer of land to the Council and preparation of the concept landscaping plan. Both of these matters are within the power of the Taylors Mistake Association to progress.

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Transfer of Land

31. Some years ago a number of bach owners formed Taylors Mistake Association Land Company Ltd and purchased 73 hectares of farmland immediately behind Taylors Mistake beach. This includes the area to be set aside for the TMB zone.
32. In 1999 the company entered into a trust deed that provided for the bulk of the land to be held for the benefit of the citizens of Christchurch. The company agreed to transfer to the Council that part of the land not required for the relocation of baches. This comprises about 70 hectares.
33. Adjacent to this land is a Council-owned property that is currently used for grazing. The bach owners' land is fenced and could easily be grazed as part of the Council property until such time as future decisions are made in respect of both properties.
34. The Environment Court came to the view that the transfer of the bach owners' land is clearly necessary and is a pre-condition for the subdivision and creation of the area that will comprise the TMB zone.

Effect of not implementing City Plan Provisions

35. The decision of the Environment Court has been incorporated in the City Plan and those provisions are operative. This means that they are beyond appeal and that the procedural requirements of Schedule 1, Clause 20 of the Resource Management Act, have been met. If the transfer of land to the Council and the concept landscaping plan are completed, then the TMB zone will immediately come into effect without the need for a plan change.
36. The City Plan does not determine that the baches must stay, although it also provides no impediment to the Council granting licences to occupy in respect of the baches scheduled to remain, if that is what the Council decides to do. The Environment Court noted that even if the baches are scheduled that merely makes provision for them in terms of the City Plan rather than being a determination as to their status or continued occupancy of the foreshore.
37. Buddle Findlay has provided advice with regard to the obligations imposed on the Council so far as implementing the provisions of its City Plan is concerned. It advises that:
 - (a) In determining whether or not to grant licences, different considerations apply to the scheduled baches as compared with those that are not scheduled.
 - (b) The scheduled baches are clearly permitted by the Plan and whilst the Environment Court's decision made it clear that the Council was free to determine whether it would allow their continued occupation, it would seem reasonable in light of the Court's finding as to the baches' historic heritage value to proceed to grant licences so long as they were on terms that addressed any other concerns that the Council may have as landowner.
 - (c) In respect of the unscheduled baches, real difficulties would arise if the Council granted them a licence to occupy. The operative plan provisions make their presence in the Conservation 1A zone a prohibited activity and the licence would therefore be to undertake an activity that was unlawful under the Resource Management Act.
 - (d) It is open to any person to apply to the Environment Court for an enforcement order under the Resource Management Act requiring the removal of the baches on the grounds that their presence breaches rules in the City Plan. Potentially, the Council itself could be served with an enforcement order in its capacity as the landowner permitting the continued presence of the baches on its land. The Council could be required to cease permitting the occupation in order to ensure compliance with the rules in the Plan.
38. If the Council decided to allow all existing baches to remain and to grant licences to occupy, then it would again be acting contrary to the provisions of the City Plan.

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Licences to Occupy

39. The Environment Court dealt with the bach issue in the context of the Resource Management Act only. It did not determine whether or not the Council had the legal right to or should issue licences to occupy in respect of structures on land vested in the Council as legal road. All of the baches at Taylors Mistake and Boulder Bay are situated on legal road.
40. Buddle Findlay has provided advice to the Council on the matter. That advice has been shared with Duncan Cotterill, the solicitors for Save the Bay Ltd, which has argued that the Council does not have the right to issue licences. A copy of Buddle Findlay's letter to Duncan Cotterill is attached as Annexure D.
41. In the letter, Buddle Findlay states that in its view the Council has the power to grant licences to the owners of the baches situated on an unformed road. This power arises from several sources:
 - (a) Section 12 of the Local Government Act 2002. This grants to the Council a power of general competence, on top of the unrepealed roading provisions of the 1974 Act. Previously, the lack of a power of general competence meant that it was more difficult to rely on implicit powers flowing from the Council's ownership of roads.
 - (b) Irrespective of Section 12, there is good case law authority for the argument that the Council has the power to grant licences for the occupation of roads because of its status as owner. The passing of Section 12 in the 2002 Act only strengthens this view.
 - (c) The Council's powers under Section 12 must be exercised only for the purposes of performing its role, one of those purposes being "to promote the social, economic, environmental and cultural wellbeing of communities, in the present and for the future" (Section 10(b)). If it can be fairly said that taking all matters into account granting licences to bach owners is for that purpose, then the Council may exercise its powers under Section 12.
 - (d) The baches scheduled to remain have been found by the Environment Court to have the following attributes:
 - (i) Tangible and intangible heritage values.
 - (ii) None of the scheduled baches at Hobsons Bay will significantly inhibit public access through the bay.
 - (iii) The Hobsons Bay baches contribute to an appreciation of the bay.
 - (iv) There is no evidence of degradation of the quality of the environment.
 - (v) The potential for contamination of the foreshore by sewage or sullage can be avoided at Hobsons Bay by connections to a sewer line.
 - (vi) The danger to the public of rockfall is present whether the baches are in Hobsons Bay or not.
 - (vii) The risk to buildings in Hobsons Bay is not such a significant hazard as to mean that the baches could not be allowed for in terms of the Plan.
 - (viii) A particular culture has grown up around the baches in Boulder Bay.
 - (ix) Scheduling of the Boulder Bay baches would not itself impede public access. Other steps such as signage and removal of fencing would have a far more significant effect.
 - (x) No risk of derogation of the quality of the environment at Boulder Bay due to the disposal of sullage to the sea.

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- (xi) The existence of a penguin colony, and a penguin parade, and the baches at Boulder Bay are not necessarily incompatible.
 - (xii) All of the baches in Rotten Row have registration under the Historic Places Act 1993 as a heritage area.
 - (xiii) The Row clearly demonstrates aspects of cultural and historic interest.
 - (xiv) The Row and the other baches give the area visual appeal.
 - (xv) The Row can be connected to water and sewage reticulation.
 - (xvi) There is minimal risk to safety of occupants of the baches from wave or inundation.
 - (xvii) The maximum number of baches in the TMB zone would not be visually intrusive provided there were performance conditions requiring planting.
- (e) These attributes reflect issues affecting the social, environmental and cultural wellbeing of the community. If the Council were to make a decision granting licences in respect of the scheduled baches, one of the reasons for doing so would be for the purpose of addressing those issues. In such circumstances, it is fair to conclude that the Council is properly exercising its power under Section 12.
- (f) Another source of the Council's power to grant licences allowing the occupation of roads can be found in a number of older New Zealand cases. In its letter of 16 August 2005 Buddle Findlay states that the cases that recognise the ability of a Council to allow such occupation because of its fee simple ownership of the road continue to have authority. The firm has found no decision that has held that these cases no longer apply or that the Council's fee simple ownership does not extend to the ability to grant licences. This is limited, however, by the rights of the public.
- (g) Specific statutory provisions. These include Sections 357(1)(a) and 684(13) of the Local Government Act 1974, which have not been repealed, and Section 45(1) of the Public Works Act 1981. Buddle Findlay's advice with regard to these provisions is that the Council does have the power to grant licences allowing a road to be occupied. This is based primarily on the accumulation of powers flowing from Section 12 of the Local Government Act 2002 and fee simple ownership under Section 316 of the 1974 Act. This conclusion is buttressed by the implication that Sections 357 and 684 of the 1974 Act recognise the ability of a Council to authorise encroachments on roads and to allow construction on a road.
- (h) It could be argued that if the Council had the power to allow the occupation of roads by granting licences, then it would have been set out in the legislation. The counter to this is that there was no need to provide specifically for this power because it was the natural consequence of fee simple ownership set out in Section 316.
- (i) The Council's rights cannot interfere with the rights of members of the public to pass and repass along roads.
- (j) Buddle Findlay notes in its letter that cases on the issue of whether or not the rights of the public would be interfered with if licences to occupy legal road were granted, appear to accept that a degree of obstruction is permissible. Also, that the particular circumstances of each case should be taken into account.
- (k) Later cases. Comments in some of these suggest that the nature of a particular road is relevant when determining whether public rights of passage have been interfered with. In the case of the Taylors Mistake and Boulder Bay baches that might mean that because the road is unformed, is not used for vehicles and does not lead to other roads, and if the public can pass along the road on foot, their rights are not interfered with.

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- (l) The conclusion is that there is room elsewhere on the unformed road reserve at Taylors Mistake and Boulder Bay for public passage of the type currently used (by foot and/or by bicycle). It is most likely that the baches do not materially interfere with the rights of the public. The road has been sufficiently surveyed to allow this conclusion to be reasonably drawn.
- (m) The advice to Councillors is that if they wish to grant licences in respect of the baches, they can do so under existing legislation and case law.

42. Licence fees have been required from bach owners from time to time, most recently from 1976 when licences to occupy were issued for a term of 10 years expiring on 31 March 1986. The licences contained a condition that the baches were to be removed upon expiry of the term, but this was never enforced by the Council.

Building Consent Issues

- 43. It appears that most of the baches do not have building consent either for the original structure or for any alterations. In the deeds of licence entered into between 1976 and 1986, bach owners were not able to carry out any repairs or replace their baches, except for minor repairs approved by the Council.
- 44. In the form of licence attached to this report as Annexure C, bach owners are not able to build any structure, plant trees or shrubs, or make any alterations to their baches without the Council's prior approval.
- 45. The Building Act 2004 requires a building consent to be obtained when any "building work" is carried out, unless it is covered by the exceptions in Schedule 1 of the Act. Work that is for, or is in connection with, the construction, alteration, demolition or removal of a building is included in the definition of "building work".
- 46. The exceptions in Schedule 1 include repairs and maintenance to a building using comparable materials and building work that a territorial authority considers is unlikely to be carried out otherwise than in accordance with the building code or if it is, it is unlikely to endanger people or any other building.
- 47. The Building Act can (and should) be enforced in respect of the Taylors Mistake and Boulder Bay baches when any modification work is carried out. Any demolition of the baches will require a consent.
- 48. Buddle Findlay has advised the Council that building consents could be issued in respect of work carried out, or to be carried out, on the Taylors Mistake and Boulder Bay baches, notwithstanding that the land is owned by the Council, not the bach owners. There is no requirement for each bach to be on its own separate Certificate of Title. However, notices to fix relating to building work being carried out should not be issued to baches stated in the City Plan to be removed because that would be inconsistent with the provisions of the Plan.
- 49. It should also be noted that the City Plan provides that no scheduled bach shall be added to or altered in any way, other than for maintenance, which would diminish the historic character of the bach.

Supply of Services

- 50. None of the baches are connected to sewage or stormwater disposal systems. Toilets are either chemical, composting or "porta potties". All baches appear to have been connected to a power supply by way of overhead lines.
- 51. Water is supplied mainly by way of roof tanks, although the baches in Rotten Row get water from a tank that has been installed on the hillside above them. This is on land owned by Taylors Mistake Association Land Company Ltd.

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52. If the Council decides to grant licences to the baches scheduled to remain, there are a number of issues with regard to services that will need to be addressed. Firstly, the draft form of licence requires that all services that are permitted, and that a licensee may wish to install, must be underground, unless otherwise agreed to in writing by the Council.
53. Secondly, the Council will not be able to approve any proposal for installing services to baches that are to be removed. If Councillors adopt the recommendations of this report, then immediate steps should be taken so that the removal and relocation of these baches occurs as soon as possible.
54. Finally, bach owners and Council staff will need to determine the most appropriate method of installing services. Baches in the proposed TMB zone will be able to connect to a sewage reticulation system adjacent to the Taylors Mistake beach car park, provided that a pump is installed. Those baches that are too far away from the system, or at Boulder Bay, will have to make other, approved, arrangements.
55. Whilst none of these issues are insurmountable, complying with Council requirements may be expensive. Such costs, however, will be the responsibility of the bach owners.

Management Plans

56. The draft form of licence refers to landscaping and/or management plans for beautifying and retaining heritage and cultural values developed or approved by the Council.
57. Whilst there has been no work carried out on such plans as yet, if the Council decides to grant licences then the concept of beautifying and managing the Taylors Mistake area could be considered. This might involve local residents, bach owners and other interested groups.

Rangitoto Island Baches

58. Elsewhere in this report is reference to a conservation trust set up by the Department of Conservation, landowners and hut holders at Lake Alexandrina, South Canterbury. The objectives of the trust include promoting awareness and preservation of the environment in the area.
59. The Rangitoto Island Historic Conservation Trust was established to deal with baches built in similar circumstances to those at Taylors Mistake and Boulder Bay. Originally there were about 140 baches built on public reserve land on the island. Today, 34 of them remain, essentially in the same condition as they were in when they were built in the 1920s and 1930s.
60. During the 1970s and 1980s, the majority of baches were demolished as lessees died, until 1990 when the Department of Conservation, at the request of the New Zealand Historic Places Trust, recognised the social and historical significance of the bach communities and placed a moratorium on bach demolition. The trust was formed in 1997 with the purpose of recording the history of these communities and restoring the baches.
61. Leases have been renewed for the remaining baches. It has been recorded that because other bach communities, which were prevalent throughout New Zealand, have virtually disappeared the Rangitoto Island bach settlements are irreplaceable artefacts of New Zealand's architectural and social history and therefore important beyond their locality.
62. If the Council decided to grant licences to the owners of baches scheduled in the City Plan to remain, there exists the opportunity to work with the owners to preserve the baches as a part of the history of Taylors Mistake.

Precedent Effect of Decision

63. The Council has been faced with other situations in which it has had to deal with the issue of structures built on land vested in the Council as legal road. It has a policy that covers structures such as ramps, retaining walls, garages and parking platforms. Decisions on implementing the policy have been delegated to Council staff.

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64. The Council does not have a policy that covers other structures on legal road. There has been some discussion about whether or not such a policy should be implemented, particularly with the Banks Peninsula district becoming part of Christchurch City. There are many structures, such as boat sheds and slipways, on land previously vested in the Banks Peninsula District Council. It may be an advantage to prepare and adopt a policy that will deal consistently with these.
65. In the meantime, it should be made clear that any decision to grant licences to the owners of baches at Taylors Mistake and Boulder Bay is in respect of those residential units only. It is not to be regarded as a precedent for other situations in which unauthorised structures have been built, or permission is sought for new structures, on legal road.

Possible Legal Challenges Faced by the Council

66. In its letter of 12 September 2007 (a copy is attached as Annexure E), Buddle Findlay advises that if the Council granted licences to the owners of baches scheduled to remain, this could be challenged either by the commencement of judicial review proceedings or possibly by way of a claim that the existence of the baches amounts to a public nuisance. Judicial review proceedings are considered to be more likely.
67. These proceedings would most likely rely on two grounds:
 - (a) The Council cannot grant a licence for the occupation of the road at all; and
 - (b) It cannot grant licences in this case because to do so would lead to interference with the rights of the public to pass and repass along the road.
68. Buddle Findlay concludes that it is most likely that the baches do not materially interfere with the rights of the public. The position of the unformed road has been established with some certainty. If the public can pass along the road on foot, their rights are not interfered with.
69. Save the Bay Ltd, a group strongly opposed to licences being granted to the owners of baches scheduled to remain has argued that the Council does not have the ability to grant a licence for the continued private occupation of unformed legal road for residential purposes. The group has referred to the fact that the City Plan includes an intention to stop the road. If steps are taken to do this, the land comprising the road becomes esplanade reserve and therefore administered under the provisions of the Reserves Act 1977. This means that licences to occupy could not be granted without the consent of the Minister of Conservation.
70. Advice provided by Buddle Findlay in response to that view is that the Council has indicated an intention only to stop the unformed road. It appears to have arisen as part of a plan change proposed in 1989. Although the change was not proceeded with, the intention was nevertheless included in the City Plan and not subsequently removed.
71. Further, in order to stop a road, formed or unformed, the Council is required to adopt a procedure set out in the Local Government Act 1974. It has not done so. The effect of this is that the restrictions imposed on licensing by the Reserves Act are not relevant to the Council's decision in respect of the Taylors Mistake and Boulder Bay baches.
72. Save the Bay Ltd has also suggested that only the Minister of Conservation has the statutory authority to grant licences for the occupation of land that would otherwise not be permitted, such as on esplanade reserves and unformed legal road adjoining the foreshore. It is argued that such statutory authority appears to specifically provide for historical encroachments on public land where it is not otherwise authorised.
73. Advice given to the Council is that this argument can be distinguished from the situation in respect of Taylors Mistake and Boulder Bay. There is a difference between land comprising legal road vested in the owner (the Council) and public reserve land so far as licences to occupy that land are concerned.

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74. The Council has been urged to seek a declaratory judgement from the High Court to determine whether or not the Council has the ability to grant licences to occupy legal road. Buddle Findlay's advice is that it would be difficult to frame an application to the Court that would be specific enough to address the issues raised in respect of Taylors Mistake and Boulder Bay. It may be better for a group opposed to the granting of licences to take that step once the Council has made its decision.
75. In summary therefore, if the Council decides to grant licences to occupy to the bach owners at Taylors Mistake and Boulder Bay, there is a strongly arguable case to support that decision. However, the issue is not capable of a categorical answer because there are many and complex legal and factual issues that arise which have not previously been considered by the courts. As indicated earlier, a legal challenge is always possible.

Options other than Granting Licences

76. Buddle Findlay has investigated, but discounted, the granting of leases over legal road. Its view is that this is not possible, given that a lease provides the lessee with an exclusive right of use.
77. Buddle Findlay has also reviewed the possibility of the Council stopping the unformed legal road that follows the coastline at Taylors Mistake and Boulder Bay. Buddle Findlay notes that under section 345(3) of the Local Government Act 1974, the first 20 metres of land above the mean high water springs mark vests as esplanade reserve.
78. Vesting land as a reserve does not resolve the problem of the baches because of section 44(1) of the Reserves Act which expressly prohibits the use of reserve land for residential purposes without the consent of the Ministry of Conservation. The Council has the ability under section 345(4) of the Local Government Act 1974 and section 77 of the Resource Management Act to include in its City Plan a rule that provides for esplanade reserves to be either greater or less than 20 metres. Any variation to the Plan to incorporate this provision would, however, have its difficulties.
79. In any event, even if some of the baches scheduled to remain are outside the 20 metre strip, the process of road stopping would require public notification and consultation. Buddle Findlay notes that given the intense scrutiny that such a process would generate, it is doubtful that it would provide the Council with an alternative solution to the problem.

The Possible Penguin Colony at Boulder Bay

80. This report has so far centred mainly on issues that are common to baches at both Taylors Mistake and Boulder Bay. The matter of a possible penguin colony conflicting with the existence of baches scheduled in the City Plan to remain affects Boulder Bay baches only. A detailed statement and concept plan for a penguin colony prepared by the White Flipped Penguin Trust have previously been distributed to elected members.
81. The Trust's position appears to be that although bach number 6 at Boulder Bay is scheduled in the City Plan to remain where it is, in fact if the penguin colony is to be established and function as an eco-tourism experience then bach number 6 would need to be removed. Alternatively, the Trust would not object to the bach being relocated elsewhere at Boulder Bay where minimal impact to public access and enjoyment would be caused.
82. The owners of bach number 6 may agree to such a proposal but issues would then arise with regard to the alternative site (the TMB zone at Taylors Mistake could be an option) and the cost of removal and rebuilding. These are matters that will need to be considered and be reported on to the Council at some point in the future, should relocation of bach number 6 become a viable proposition.
83. The Department of Conservation has actively supported the Trust. A letter setting out conservation issues and suitable habitat for the white-flipped penguin was sent to Councillors with other materials ahead of the December 2006 seminar.

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84. In 2004 the Department purchased a bach at Boulder Bay that was situated on public conservation land adjacent to the legal road on which the other baches have been built. The building was originally a World War II military structure on Godley Head and will eventually be removed to its original site.
85. Councillors may be interested to know that the Department has been involved in setting up a conservation group comprising landowners and hut holders at Lake Alexandrina in South Canterbury. The aims of this group, which has now formed a charitable trust, include promoting awareness of environmental issues and undertaking a programme of restoration in the area. Whilst these are more simple tasks than establishing a penguin colony, nevertheless an opportunity may exist for bach owners, the Department of Conservation, the Council and the White-Flipped Penguin Trust, as well as other groups with an interest in the colony to form a similar organisation. The idea behind the Lake Alexandrina Conservation Trust was to get all those involved working together for the common good of the area as a whole.
86. If the Council decides to grant licences to bach owners, the suggested form of licence attached to this report contains a provision (clause 18.2(d)) for cancellation in the event that the continued existence or occupation of a bach is inconsistent with the proposed penguin colony at Boulder Bay.

THE OBJECTIVES

87. The first objective for the Council is to implement the provisions in its City Plan in respect of the baches at Taylors Mistake and Boulder Bay. This will require the removal of the 14 unscheduled baches because at present they are a prohibited activity in the Conservation 1A zone in which they are currently situated.
88. The second objective is to require the transfer of the Taylors Mistake Association land to the Council and in the course of doing so, create the TMB zone. This is so that the land comprising the TMB zone becomes available to bach owners for the purpose of rebuilding their baches. At the same time, the bach owners should be preparing the necessary concept landscaping plan as a matter of some urgency.
89. The third objective is the granting of licences to occupy to the owners of baches scheduled in the City Plan to remain, should the Council decide to do this.

THE OPTIONS

Option One

90. The Council could decide to do nothing. Members of the Taylors Mistake Association might be happy with this, but it is likely that those people and organisations opposing the continued existence of any or all of the baches at Taylors Mistake and Boulder Bay would take a different view. By doing nothing the Council would be seen to be permitting an activity that is unlawful under the Resource Management Act and exposed to the risk that an application to the Environment Court is made requiring the removal of the unscheduled baches. Whilst any action of this type may be directed at the owners of these baches, potentially the Council itself could be served with an enforcement order requiring it to cease permitting the unscheduled baches to remain.
91. By doing nothing, the Council faces the likely cost of having to defend its decision in the Environment Court.

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Option Two

92. The second option is for the Council to issue licences to occupy in respect of all scheduled and non-scheduled baches at Taylors Mistake and Boulder Bay. As indicated earlier, significant difficulties would arise if the Council decided to licence the unscheduled baches. This is because the provisions in the City Plan make the presence of the baches a prohibited activity in the Conservation 1A zone and the issue of a licence to occupy would allow an activity that is unlawful under the Resource Management Act. Again, any decision by the Council to do this would be open to attack in the Environment Court with the associated costs that such proceedings would incur.

Option Three

93. The third option is for the Council to decide to implement the provisions of its City Plan so far as the unscheduled baches are concerned but also not to issue licences to occupy in respect of the baches that are scheduled to remain. This decision could result in the Council being faced with complex resource management issues given that although the scheduling of the baches is a permitted activity in the City Plan their status in terms of occupation of land owned by the Council would remain in doubt. The Council may end up re-litigating issues that have already been addressed comprehensively in the 2003 Environment Court decision. Also, the Council would be faced with endeavouring to provide for building controls and services to the baches without having the terms and conditions of a licence to rely on.
94. On the other hand, by not issuing licences to occupy in respect of scheduled baches the Council is retaining the option as fee simple land owner to require action to be taken from time to time under threat of a notice for removal of the baches. It is difficult to see, however, much advantage to the Council in taking this option.

Option Four

95. The fourth option is for the Council to decide that all baches are to be removed, whether scheduled or not. The Environment Court noted that scheduling baches merely makes provision for them in terms of the City Plan, rather than determining their status or continued occupation of legal road. Bach owners have already agreed on an earlier occasion to vacate their baches, when they entered into licences that expired in 1986.
96. Notwithstanding this, the Council would have to demonstrate that it is reasonable for the Council not to follow the conclusions reached by the Environment Court and for acting contrary to its own Plan. The Council may face an application for a Judicial Review of its decision.

Option Five

97. The final option is for the Council to decide to implement the provisions of the City Plan relating to the baches. This would involve giving notice to the owners of unscheduled baches that those baches are to be removed. This will have the effect of requiring the Taylors Mistake Association to take immediate steps to transfer land to the Council and complete the concept landscaping plan.
98. Subdivision of the TMB zone land will require bach owners to address matters such as the services to be provided to baches built on that land, including disposal of sewage possibly by way of a connection to existing Council owned facilities at Taylors Mistake.
99. At the same time, the Council could agree upon the terms and conditions of the licences to be issued to the owners of scheduled baches with a view to these being completed as soon as possible. A suggested form of licence has been prepared with the assistance of Buddle Findlay and this is attached to this report. It is suggested that a term of five years be imposed so that the Council retains the opportunity to require removal of the baches at some point in the future if it wishes to allow full, unrestricted access along the unformed legal road. A licence to occupy in respect of bach number 6 at Boulder Bay may be granted subject to the owners and the Council agreeing on future steps to be taken should that bach be required to be removed and relocated to facilitate the possible establishment of a penguin colony.

5 Cont'd

100. Licences to occupy will require the owners of all scheduled baches to make provision for services to be installed to the satisfaction of the Council.
101. The risk to the Council as a result of it adopting this option is that those people and organisations that oppose baches remaining at Taylors Mistake and Boulder Bay will apply to the High Court for a judgement declaring that the Council has no legal authority to grant licences in respect of structures on legal road. The Council's external advisers have pointed out that whilst there is little that can be done to avoid such a challenge being made, it is strongly arguable that the Council has the power to grant licences to the owners of baches scheduled to remain. If the outcome of such proceedings is that the Council does not have the ability to grant licences, the result would be that the scheduled baches would become unlawful structures and subject to a requirement that they be removed from Council property.

THE PREFERRED OPTION

102. It is clear that none of the practicable options provide complete protection to the Council from attack by persons and organisations with an interest in or affected by the Council's decision, nor from the possibly significant costs that the Council would be required to incur. However, it is also clear that the Council's best approach is to implement the provisions of its City Plan in respect of the Taylors Mistake and Boulder Bay baches and issue licences to those baches scheduled to remain, by adopting option five.

FURTHER INFORMATION

103. Attached to this report are copies of the following documents:
 - Background information and chronology of events.
 - Location map.
 - Draft form of licence.
 - Buddle Findlay letter dated 16 August 2005.
 - Buddle Findlay letter dated 12 September 2007.
104. Councillors are also referred to the information contained in a grey folder distributed before the December 2006 seminar. This included:
 - Environment Court decision.
 - Maps and plans.
 - "Position Statement/Compromise Potential" from White Flipped Penguin Trust.
 - "Boulder Bay Concept Plan" from the Trust.
 - "A Guide to the Baches in Taylors Mistake" from Save the Bay Limited.
 - Letter from the Taylors Mistake Association (Inc).
 - Letter from the Department of Conservation (emailed separately).
105. A bound volume containing further copies of these documents has been separately circulated to Councillors with this report.

6. ADOPTION OF CHRISTCHURCH CITY COUNCIL RURAL FIRE AUTHORITY FIRE PLAN

General Manager responsible:	General Manager City Environment, DDI 941 8656
Officer responsible:	Civil Defence Emergency Management & Rural Fire Manager
Author:	Keith Marshall, Principal Rural Fire Officer

PURPOSE OF REPORT

1. The purpose of this report is to consider and recommend the adoption of the new Christchurch City Council Rural Fire Authority Fire Plan.

EXECUTIVE SUMMARY

2. Under the Forest and Rural Fires Regulations 2005, the Christchurch City Council Rural Fire Authority is required to adopt a new Fire Plan in the form set out in the Forest and Rural Fire Regulations 2005. The Plan was adopted on 1 September 2005. At the same time and concurrently the former Banks Peninsula District Council Rural Fire Authority also had to write a new Fire Plan in the form and manner set out in the Forest and Rural Fires Regulations 2005.
3. As a result of the merging of Christchurch City with Banks Peninsula District, the National Rural Fire Authority has advised that the Christchurch City Council Rural Fire Authority needs to produce and adopt a new Fire Plan covering its total territorial area.
4. Furthermore, the Forest and Rural Fires Regulations 2005 requires that the sections of the Plan under the heading of 'readiness' and 'response' be reviewed every two years. Any changes made as a result of this review means the Fire Authority must promptly provide a copy of the amended Plan to the NRFA.
5. No significant changes have been made to the Plan but there is now recognition that rural fire management is part of the Council's new Civil Defence and Emergency Management and Rural Fire Business Unit and the Plan sets out various responses and actions which fall on that unit as opposed to the Transport & Greenspace Unit.

FINANCIAL IMPLICATIONS

6. Two options have been considered in terms of their financial impact and although the recommended option may involve some minor increase in operating expenditure, the potential cost of non-compliance could result in not having access to National Rural Fire Authority funding.

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

7. Yes

LEGAL CONSIDERATIONS

8. The Council must comply with the provisions of the Forest and Rural Fires Regulations 2005.

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

9. Yes

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

10. LTCCP Page 99, 'Civil Defence and Rural Fire': The Council participates in the Canterbury Civil Defence Emergency Management Group, as well as providing a response to rural fires in its area of jurisdiction. The Council also supports the city in planning for pandemic influenza.

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

11. Yes

6 Cont'd

ALIGNMENT WITH STRATEGIES

12. Yes.

Do the recommendations align with the Council's strategies?

13. Yes.

CONSULTATION FULFILMENT

14. Not required.

STAFF RECOMMENDATION

It is recommended that the Council as the Rural Fire Authority adopt the new Fire Plan as produced in the format required by the Forest and Rural Fires Regulations 2005 and as required by the National Rural Fire Authority.

6 Cont'd

BACKGROUND (THE ISSUES)

15. The Christchurch City Council Rural Fire Authority (CCCRFA) was required, in 2005, to prepare a Fire Plan which complied with the Forest and Rural Fires Regulations 2005 for the Council's Rural Fire Authority's territorial area.
16. The former Banks Peninsula District Council Rural Fire Authority produced a Fire Plan which complied with the Forest and Rural Fires Regulations 2005. That Plan was largely based on the CCCRFA Plan and staff from the Christchurch City Council helped in its compilation. The Banks Peninsula District Council adopted its Fire Plan on 31 August 2005.
17. As a result of the merger of Banks Peninsula District and Christchurch City the National Rural Fire Authority has advised that the Christchurch City Council Rural Fire Authority must now produce a single Fire Plan.
18. In addition under Regulation 40(i)(a) of the Forest and Rural Fires Regulations 2005, all fire authorities are required to review the Fire Plan sections on 'readiness and response' within two years of initial adoption of the Plan ie by 30 September 2007.

PRESENT SITUATION

19. The Fire Service Amendment Act 2005 removed the Rural Fire Management Code of Practice as a standards setting and compliance document.
20. The Forest and Rural Fires Regulations 2005 provide:

Part 2, Fire Control Operations sub-part 1 – Fire Plans of those Regulations state

- (1) A Fire Authority in existence at the commencement of these Regulations must prepare and adopt a Fire Plan no later than 60 days after the commencement of these Regulations.
- (2) A Fire Plan must set out the policies and procedures of the Fire Authority under the following headings and in the following order:
 - (a) Reduction
 - (b) Readiness
 - (c) Response
 - (d) Recovery
- (3) A Fire Authority must provide to the National Rural Fire Authority (NRFA) a copy of its Fire Plan no later than 30 days after the Plan is adopted.

FIRE AUTHORITY JURISDICTION

21. The Council's Rural Fire Authority's territorial area comprises two gazetted Rural Fire Districts: Bottle Lake Rural Fire District, and Chaney's Rural Fire District. The balance of the land outside these two gazetted districts and the NZ Fire Service districts is known as the Christchurch City Council Rural Fire Authority Territorial Area. This means Christchurch City Council has a legislative requirement to produce three Fire Plans as all three Fire Authorities areas were in existence at the time of passing of the Regulations in 2005. Plans for Bottle Lake Rural Fire District and Chaney's Rural Fire District were adopted on 15 December 2005. However, the Council's Principal Rural Fire Officer is currently discussing with the National Rural Fire Authority and Department of Conservation the possibility of having one Fire Plan covering the entire Christchurch City Council's rural fire area ie a single plan that also covers Bottle Lake Rural Fire District and Chaney's Rural Fire District.
22. A Fire Plan has now been prepared in the style and the format set out in the Forest and Rural Fires Regulations 2005.

6 Cont'd

THE OBJECTIVES

23. The objective is to prepare a Fire Plan that covers the former Banks Peninsula District and the CCCRFA that meets the requirements of the Forest and Rural Fires Regulations 2005, and which is adopted by the Council as the Fire Authority. Meeting this objective will give the Council continued access to the grant assistance from the National Rural Fire Fighting Fund and grant assistance for our Voluntary Rural Fire Forces registered under an agreement with the NRFA.

THE OPTIONS

24. **Option A**

The Council could choose to continue to use the existing current Fire Plans. These existing Fire Plans provide a 'response format' which has worked very well for the last two years. However this option would not comply with the requirements of the National Rural Fire Authority.

25. **Option B**

The Principal Rural Fire Officer prepares a single Fire Plan in the form prescribed by the Forest and Rural Fires Regulations 2005. This option requires the Council, as the Rural fire Authority, to approve and adopt the new single Fire Plan and forward to the National Rural Fire Authority a copy of the Plan within 30 days of adoption. The Council must also make available for public inspection a copy of the Fire Plan under Section 12(4B) of the Fire Service Act 1975.

THE PREFERRED OPTION

26. The preferred option is to have a Fire Plan that complies with the Forest and Rural Fire Regulations 2005. Therefore, option (B) is preferred.

6 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option

27. Option B:

Complies with the Forest and Rural Fires Regulations 2005 and the written request of the National Rural Fire Officer to produce a single Plan which combines the existing Plans written and adopted by both the Banks Peninsula District Council RFA and Christchurch City Council RFA.

	Benefits (current and future)	Costs (current and future)
Social	Continues to give the Council access to grant assistance from the Rural Fire Fighting Fund and grant assistance funding for equipment.	There are positive cost benefits by compliance.
Cultural	Expectation that rural fire emergencies will be dealt with 24/7.	
Environmental	Potential for improvement in rural fire management and performance with flow on effects for people, property and the environment.	
Economic	Will give the Council continued access to funding from the NZ Fire Service.	There may be flow on minor costs on compliance but it is difficult at this stage at see where and what they may be.
<p>Extent to which community outcomes are achieved:</p> <p>Primary alignment with community outcome a Sustainable Natural Environment Protection. Also contributes to Liveable City and a Safe City.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Responsibilities to provide a ready reaction response 24/7 under the Forest and Rural Fires Act 1977.</p> <p>Effects on Maori:</p> <p>Would have been considered as part of the Act review.</p> <p>Consistency with existing Council policies:</p> <p>Comply with conditions of Forest and Rural Fires Act 1977, Forest and Rural Fires Regulations 2005 and the Fire Service Act 1975 and subsequent amendments.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>There will be support from the National Rural Fire Authority and from other Fire Authorities within Canterbury for Christchurch City Council Rural Fire Authority to remain compliant with the Legislation.</p> <p>Other relevant matters:</p>		

6 Cont'd

Maintain the Status Quo (if not preferred option)28. **Option A:**

Retaining the former BPDC and CCC Rural Fire Authority Plans, and non compliance with the Forest and Rural Fire Regulations 2005.

	Benefits (current and future)	Costs (current and future)
Social	Little change providing that service levels comply with the current Fire Plan.	There will be additional cost to the Council as it will not be able to make claims on the Rural Fire Fighting Fund.
Cultural	Still an expectation for the Council to respond to rural fire emergencies 24/7.	
Environmental	Benefits would be as they are present. Missing the opportunity for improvement.	
Economic	Economic cost would vary from year to year but the expectation is there would be a cost to the Council each year.	Costs could vary ranging from several thousand dollars to very significant costs (in the hundreds of thousands).
<p>Extent to which community outcomes are achieved:</p> <p>Primary alignment with community outcome a Sustainable Natural Environment Protection. Also contributes to Liveable City and a Safe City.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Responsibilities to provide a ready reaction response 24/7 under the Forest and Rural Fires Act 1977.</p> <p>Effects on Maori:</p> <p>Would have been considered as part of the Act review.</p> <p>Consistency with existing Council policies:</p> <p>Comply with the conditions of the Forest and Rural Fires Act 1977, Forest and Rural Fires Regulations 2005 and the Fire Service Act 1975 and subsequent amendments.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>The National Rural Fire Authority and other Fire Authorities within Canterbury would probably feel less then satisfied with non-compliance as it is likely it would have some impact on them as well.</p> <p>Other relevant matters:</p>		

7. TRAM EXTENSION STUDY

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Programme Manager Liveable City
Author:	Dave Hinman, Principal Adviser, Strategy and Planning

PURPOSE OF REPORT

1. Following on from a Council seminar on 21 August 2007, this report summarises the findings of the consultants for the tram study and the staff response, and reports on some issues relating to "future proofing" the City Mall rebuild to allow for future inclusion of the tram.

EXECUTIVE SUMMARY

2. In December 2006, following the consideration of submissions on the refurbishment of City Mall, the Council requested "a study into the viability of expanding the tram in the Central City that would serve both tourists and Christchurch residents". Consultants were engaged to undertake the study, and their findings together with staff comments are suggesting a way forward. An update of a 1999 Light Rail Study was also undertaken. Also at the December meeting, the Council approved "the installation of a concrete base which is able to support a possible future extension of the tram, during the construction of the first section".
3. After evaluating a number of route options, the consultants opted for a simple extension of the present city loop which leaves the current route at Worcester Bridge – then via Oxford Terrace, Cashel Street, High Street and back through the Square to rejoin the current route behind the Cathedral. It is shown as almost entirely off road, although no details of location are included. It also includes a turn from Cashel Street to High Street around the edges of "Hack Circle". An alternative, second choice, was similar to the core route but continues along High Street, Manchester and Cashel Streets, back to High Street, to avoid the turn around Hack Circle and to extend further into the area where central city regeneration is currently focussed. These routes are shown in Attachment 1.
4. The report recommends that the Council acknowledge the opportunity and desirability of extending the tram through the Central City, including City Mall. It is further accepted that before a firm proposal can be considered it will require consultation with affected parties along the entire route, development of a complete funding package, and in the case of any route through City Mall, use of a Special Consultative Procedure to alter the status of the Mall. At present the Council is constructing a foundation through City Mall as part of its redevelopment, and it is considered pragmatic to ensure that this is designed with sufficient strength to accommodate any future possible tram extension, along the preferred alignment. To achieve this future proofing, confirmation of some of the details of the route (insofar as it affects City Mall) is needed at this stage.
5. The desirability of a route encompassing Oxford Terrace, Cashel and High Street (Mall) and back through Cathedral Square is acknowledged. The extended route to Manchester Street is preferred by the City Mall designers and Council staff and, when presented at the August seminar was considered to be a better option than the shorter "Hack Circle" route. Staff were asked to further investigate some sub options, including turning the tram at the western façade of the Holiday Inn Hotel as an alternative to continuing to Manchester Street. While the turn at Hack Circle is not favoured, both the extension to Manchester Street and the shorter turn at the Holiday Inn have positive attributes, but there are potential legal difficulties with the Holiday Inn option as it involves crossing a reserve. As the track alignment in the Mall is very similar for both options, the decision on which of these options to support does not need to be made immediately, and it is recommended that further work be undertaken in this regard.
6. In relation to Project City Mall the report reviews the options for future-proofing for later tram operation. Given the existence of a concrete base and tram rail in High Street, but the need to renew the concrete base, the question of re-installing the existing, or replacement rails was considered. While there would be savings in both cost and future disruption by including the rails now, to do so prior to further consultation is likely to raise legal issues of "predetermination". This is not considered an issue in respect of the concrete base only, as a base is an integral part of the mall reconstruction, and the design has been adapted to provide for possible later tram rail additions. There would be no visible signs of the tram option at this stage. The report recommends that as design proceeds for the Hack Circle and Cashel Street sections of the Mall, provision also be made for the installation of a concrete base as previously agreed for High Street.

7 Cont'd

FINANCIAL IMPLICATIONS

7. It is estimated that the cost of extending the tram from Worcester Street via the Mall and back to Cathedral Square would be in the region of \$4.0M for the Hack Circle option, and \$5.3M for the Manchester Street option. The Holiday Inn option would cost in the region of \$4.5M. Approving and sourcing this funding is not however requested at this stage. Within these totals, the cost of constructing a strengthened concrete base to support a future tram option is \$147,000 for Stage 1 (High Street) and \$314,000 for the subsequent Cashel Street stages. The Council has previously approved the installation of a concrete base in the first stage of Mall reconstruction and this report seeks approval to continue this installation through the latter Mall stages. It should also be noted that if the tram is subsequently added to the mall, part of the surface will need to be lifted to put the rails in place. While this will add a level of cost at that time, the option of putting the rails in place now is not tenable until any future process of consultation around the introduction of any tram per se' is undertaken.

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

8. The additional cost of adapting the concrete base has not been provided for in the City Mall budget. The first section of High Street (from Colombo St to the overbridge) is currently under construction, with the balance of High Street to commence early in 2008. Cashel Street will follow 2008/09. It is proposed to fund this work as a temporary substitution from the Major Amenity budget in the Transport and Greenspace 2008/09 capital programme. This will require the estimated costs to be brought forward to 2007/08. The substitution will be addressed in the 2009-19 LTCCP.

LEGAL CONSIDERATIONS

9. As indicated earlier in this report, the Council has previously approved the installation of a concrete base that is able to support a possible future extension of the current tram route through the City. The base is to be included in the construction of the first stage (High Street) of the improvements being carried out to the mall. This report is also requesting that the base be constructed in the subsequent stages (ie Cashel Street)
10. At present the City Mall is designated a pedestrian mall by way of a Special Order made by the Council in 1981. Allowing the area covered by the Special Order to be used as a road by vehicles (other than service vehicles as currently specified) or as a tram route would require the Special Order to be varied. A decision to do this could not be made by the Council without first consulting with the public by way of the special consultative procedure.
11. The intention at this stage is only to install the concrete base on which tram tracks could be laid at some future time. By doing this, the Council is taking no steps to vary the current use of the mall. The concrete base will be underneath a paved surface. A proposal to retain the existing (1920s) base and tram tracks in High St has proven to be impractical.
12. Consultation with the public in respect of the proposed improvements to the City Mall generated support for the future extension of the tram route. Therefore, it makes economic sense for the Council to make provision for this possibility during construction of those improvements. Any decision on whether or not to proceed with the tram proposal can only be made, however, after further consultation, including on the method of funding for such a project.
13. Also, a matter for consideration with regard to any future decision on the tram extension will be the effect of the Christchurch City (Reserves) Empowering Act 1971. This Act vested in the Council a number of pieces of land in the central city as reserves to be used as lawns, ornamental gardens and for ornamental buildings. The option for extending the tram route to include a turning circle at the intersection of Cashel and High Streets (Holiday Inn option) would require rails to be laid across one of these reserves, and one alignment shown of the track via Manchester Street crosses another. Using the land for this purpose is contrary to the provisions of the legislation.

7 Cont'd

14. The reserves are held and administered by the Council subject to the provisions of the Reserves Act 1977. Whilst seeking an amendment to the Christchurch City (Reserves) Empowering Act may be an option, it might also be possible for a right of way to be granted under the Reserves Act that would enable the tram to pass over the reserve land. The matter will require further investigation.

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

15. It is the view of the Legal Services Unit that there are no legal implications arising from a decision by the Council to include in the construction of the improvements to the City Mall a concrete base that is able to support a possible future extension of the City's tram route.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

16. Funding for the City Mall project is included in the 2006-16 LTCCP. Extension of the tram is not funded. This report is not recommending extending the tram route at this stage, but rather to "future proof" for its possible extension later.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

17. An extension of the tram route is consistent with the Central City Revitalisation Strategy, Greater Christchurch Urban Development Strategy and the Christchurch Visitor Strategy. The proposal at this stage is not to extend the route, but to "future-proof" for its possible extension.

CONSULTATION FULFILMENT

18. Consultation on Project City Mall in 2006 favoured extending the tram through the Mall. As noted in paragraph 9 (legal considerations) further consultation will be needed to approve both funding and changes to the City Mall Special Order.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Acknowledge the desirability of extending the tram route to incorporate Oxford Terrace, City Mall (Cashel and High Streets), Colombo Street and Cathedral Square, joining the existing line behind the Cathedral.
- (b) Acknowledge the merits of the tram either continuing along High to Manchester to Cashel Streets or turning across the reserve to the west of the Holiday Inn Hotel and request a further report on which of these options should be recommended.
- (c) Authorise further work on the route details, cost estimates and funding options with a view to progressing the proposal through the 2009-19 LTCCP.
- (d) "Future proof" for the extension of the tram by
 - (i) Confirming the general route (as per (a) above) for future planning and investigative purposes.
 - (ii) Approve the design and construction of the strengthened concrete base for the later stages of the Mall reconstruction (ie Cashel Street) in addition to High Street (already approved).

7 Cont'd

BACKGROUND (THE ISSUES)

19. The design for Project City Mall as consulted on during September - October 2006 included extending the tram through the Mall as an option, although it was not provided for in the Mall Project budget. The route as shown proposed that the tram be extended through Tramway Lane and Tattersalls Lane south to Cashel Street, then west along Cashel to Oxford Terrace, joining the existing line at the Worcester Bridge.

20. The consultation revealed significant support for extending the tram through the Mall, with nearly two-thirds of respondents in favour. A more detailed breakdown is as follows:

Q. "The extension of the tram is not funded as part of this project, however do you think that the tram route should be extended through City Mall?"

63% of all those who responded favoured tram (537)

63% of shoppers (312)

73% of business/property owners (55)

74% workers (90)

64% visiting café/restaurant (185)

67% residents (51)

44% students (82)

23% school pupils (26)

This compared to 16% (of 533) who supported a more modern form of transport eg the Shuttle, through the City Mall area.

21. The broad support for the tram (including business/property owners, shoppers, workers and residents) could be interpreted as an acceptable solution by those both strongly supporting and opposing having a road with private vehicles through the mall.

22. The tram operator (Christchurch Tramway Ltd) was also supportive, but considered that the route proposed by the designers was impractical, because of the very narrow nature of Tattersalls Lane and because it bypassed Cathedral Square, the stop used by more than 70% of patrons. It suggested other options which by changing the direction of the tram to anti-clockwise, ensured that the tram always passed through Cathedral Square.

23. The Council when considering the City Mall report at its meeting on 14 December 2006 included in its resolutions:

"(d) Approve the installation of a concrete base which is able to support a possible future extension of the tram, during the construction of the first section"

and

"(f) Authorise a study into the viability of expanding the tram in the Central City that would service both tourists and Christchurch residents, with an initial report by June 2007."

24. Following a tender process, consultants Maunsell Ltd were engaged to undertake the tram study, and an update of a 1999 Light Rail Study was also done by the original authors (Booz Allen Hamilton). Key stakeholders, including the Central City Business Association, Christchurch Tramway Ltd, the Heritage Tramways Trust, Environment Canterbury and Christchurch and Canterbury Tourism as well as relevant Council staff were consulted as part of the study. The report back to the seminar (and as set out below) has incorporated Council staff views as well as those of the consultant.

25. The study found that the current tram service is highly focused as a tourist attraction. In addition some 6000 local residents hold annual passes, which also give access to the Port Hills Gondola. An expansion of the existing route could achieve the following:

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- Assist with the rejuvenation of the central city by bringing more movement and people.
 - Attract additional tourists - perceived value of a lengthened trip.
 - Expand the existing tourism experience by incorporating new attractions.
 - Create a route to attract locals to use the tram as an extension of existing mobility services in the central city e.g. buses, free shuttle.
 - Create a core route with potential as future light rail services loop.
26. The study considered a variety of route options and based its recommendations on the following route selection criteria:
- Promotion of tourism
 - Mobility around the City
 - Future compatibility for commuting
 - Continuance of Historic theme
 - Constructability
 - Infrastructure Cost
 - Operational Practicality
 - Safety
 - Impact on traffic and parking
 - Consistency with future development
 - Access to additional tram storage
27. The preferred route as recommended by the consultants was an anti-clockwise loop utilising the existing track from behind the Cathedral to the Worcester bridge, and travelling along Oxford Terrace to Cashel, along Cashel to High, then along High to Colombo and back through the Square to the existing line. (Attachment 1). It ensured use of the Cathedral Square stop, as requested by the tram operator, and could operate either with the existing route as a "figure of 8" or independently. The consultant also chose locations in both Oxford Terrace and Colombo Street/Cathedral Square where the tram could operate independently of street traffic.
- Attractions along the route include:
- Oxford Terrace Strip
 - Avon River Views, inc Water Wheel
 - Bridge of Remembrance
 - Ballantynes
 - Other City Mall etc Retail (Cashel, High & Colombo St South of Cathedral Sq)
 - Connection to the (existing) Bus Exchange
 - Cathedral Square
28. The consultants also identified an option which further extended the preferred route with additional trackage along High Street to Manchester Street then back along Cashel street to the High/Cashel intersection. This is also shown in Attachment 1. A variant of this is to (in the future) continue the line along High Street towards the Catholic Cathedral and Polytechnic. The extended route also gets the tram in closer proximity to SOL, Lichfield Lanes/High St, focal points of central city revitalisation.
29. The mall designers do not support the tram turning at Cashel/High ("Hack circle") and the extension to Manchester Street is favoured. This is also supported by Council staff. Given the decision already made to install a concrete base in the first stage of the Mall refurbishment (High Street) as future-proofing for the tram, an early indication of which route would be favoured is needed so that detailed mall design may proceed beyond the first stage.
30. At the seminar some variations of these two options were suggested and these have been investigated as follows:
- (a) Continue east along High and Cashel Streets but turn across the west face of the Holiday Inn (i.e. do not continue to Manchester Street). This option is shown as Attachment 2. This would overcome the Hack Circle turning issue and would avoid the tram having to mix with traffic in Manchester Street as well as being a less expensive option, but it has some disadvantages.

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Firstly the triangular land in front of the Holiday Inn is designated as reserve "for the purposes of lawns, ornamental gardens, and ornamental buildings" (Christchurch City (Reserves) Empowering Act 1971), and this may mean considerable difficulties in obtaining consent. The adjoining owners may not be supportive of a tram/tram stop on what has been a quiet and passive public space. Also, the space available requires a full turn at a tighter radius than is ideal for tram operation, as well as affecting areas of car parking in both High and Cashel Streets. Finally the positive impact on penetrating a key revitalisation area is reduced.

- (b) Reverse the direction of the High- Manchester- Cashel extension by continuing the track along Cashel to Manchester with it crossing itself on the return via High Street. This option is shown as Attachment 3. This has the advantage of less curved track at Cashel/High, but the disadvantage of an expensive and potentially noisy rail crossing plus the creation of a contra flow lane for the tram only in Manchester Street, eliminating the left turn lane into Cashel Street. At this stage it is considered that the consultant's option, detailed as Attachment 4, is the more suitable option, although some more work is needed to determine alignment as it enters Manchester Street and the issue of how general traffic would then access this part of High Street.

Costs of Each Option

31. The consultant for the tram study estimated that, if using all new rail, the route turning at Hack Circle is likely to have a total cost of \$4.6M. It appears that this may be conservative and that a more likely cost is \$4.0M. The consultant also suggested an additional cost of \$1M for continuing the track beyond Hack Circle in the form of the High/Manchester/Cashel loop (Attachment 4) Council calculations suggest \$1.3M for this extension. The shortened loop in front of the Holiday Inn would cost less because of its shorter distance, with an estimated additional cost of \$460,000, giving a total for this option of \$4.46M. The cost of the reverse direction loop (Attachment 3) would be higher than the consultant's option because of the need for crossing "special work" and for physical separation of the tram from other traffic in Manchester Street. The additional cost is estimated to be \$70,000.
32. Should the Council decide to pursue the tram extension proposal, more work will be needed on the actual locations in Oxford Terrace, the extended loop area (High, Manchester, Cashel Streets, and Colombo Street/Cathedral Square). There are some clear advantages in the off road locations as suggested by the consultant (including a possible future Light Rail loop) but there are also some negatives. The next stage of the study will be to evaluate the location options.

Economic Benefits

33. Economic benefits:
- Currently 156,000 tourists p.a. (hop on/off for up to 2 days)
 - Currently 6000 local annual passes (linked to Gondola). A change in charging regime may be needed to achieve greater local use. Slow speed and ease of access are seen as issues by some.
 - Tourist numbers may grow by up to 4% p.a. with extension
 - Visitor spend due to growth in tourist numbers may increase by \$350,000 p.a. No assessment was made of additional spend along the new route by current numbers of tourists.
 - The most significant economic benefit is to the new area served by tram with up to 150,000 more people visiting per annum
 - The tram is now an internationally recognised icon of Christchurch – new areas served by tram would benefit from image, publicity etc

No analysis of impact of any increase in local use has been undertaken. Spending by locals using the tram may also increase along the tram route, but not necessarily their net central city spend.

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Operating Costs

34. Operating costs:

- Ongoing costs to Council of the extended line not identified in the study
- For the current route, the annual licence fee paid by operator more than covers Council's costs, other than costs of capital, now spread across total borrowings
- For 2006/07 there was a surplus in the tram account of \$112,000 after deduction of depreciation (\$95K) and Council share of maintenance.
- Operating costs for the tram company will increase with a longer route, (including requirement for extra tram(s)). Without a significant increase in patronage, any increase in Council licence fees may not be viable. Extra storage space will be required if more trams used.
- Ongoing Council costs for extension will be affected by method of funding - yet to be determined.

Funding Options

35. One or more of the following options were suggested by the consultants and need to be the subject of further investigation:

- Current capital funding
- Part LTNZ subsidy
- Local special rate
- Increased licence fee from tram company to fund borrowings
- Direct contributions from tram company and other businesses

36. Booz Allen Hamilton study and comments.

- Updated 1999 costs for on rail and on road light rail
- Confirmed Maunsell capital cost estimates
- Any light rail option must be integrated with Metro system
- ECan are leading a strategic review of Public Transport Future to 2041.
- Any study of rail needs to link to the Greater Christchurch UDS objectives
- Many variables to resolve before any confirmation that proposed new tram loop could be part of future light rail.

Concrete Base Issue

37. Following on from the Council decision in December, investigations carried out in March to confirm the location of services also confirmed an existing concrete base together with rails. (double track) However it is not complete - it had been cut by services, planting of trees etc. Tests showed that rail is suitable for reuse, though surface will need cleaning and grinding. It was proposed to leave track in situ, on the existing base, repairing both as necessary, and if the tram does not eventuate, rails would remain as an historic feature.

38. However, because of the uncertainty of the quality of existing base, built in the 1920s with little reinforcing, the need to remove a significant depth of concrete to accommodate new pavers, and the need for additional drainage because of levels (determined by top of rail), the decision has been made to replace the old concrete base.

39. This raises issues of whether to reinstate rail now or later, which rail to use (it may be better to use new or other rail - retrieved rail could be used elsewhere) and additional costs. Ideally rail would be reinstated now to avoid future disruption, and to save later costs. But this could be interpreted as pre-determining the decision of whether the tram route should be extended, a decision not yet made or tested through formal public consultation. The design of the base will provide for later retrofitting, if the tram is confirmed, but there are additional costs involved in the design solution which could be avoided if the rail was laid at the time of mall reconstruction. It would also require the temporary lifting of the new pavers which would therefore need to be loose laid on sand rather than the preferred solution of affixing to concrete.

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40. Costs of constructing concrete base to allow for tram @ \$980 per lineal metre

High Street (mall)	150 metres = \$147,000
Cashel Street (mall)	320 metres = \$314,000

Additional costs @ \$1564 per metre of installing rail at same time, (assuming new rail)

High Street (mall)	150m = \$234,600
Cashel Street (mall)	320m = \$500,500

However if rail (new) is added later the costs increase to \$2017 per metre resulting in the following:

High Street (mall)	150m = \$302,550
Cashel Street (mall)	320m = \$645,460

That is an overall extra cost of \$212,910

- Note:
1. These cost estimates exclude contingencies and any provision for escalation.
 2. The purchase of new rail for both Cashel and High Streets has been assumed – if existing rail, retrieved from High Street, is reused, there will be some savings. The existing rail is being retrieved, partially cleaned and stored in the meantime, at an estimated cost of \$22,000.
 3. Because the dimensions of the rail to be used are not yet known, but it has been necessary to progress stage 1 design, a more complex design has been assumed, to allow for a range of sizes. For later stages, if rail size has been determined, the design can be simplified and costs reduced.

THE OBJECTIVES

41. Acknowledge the desirability of extending the tram in the future and where this should be (subject to public consultation and securing funding). Future proofing for tram extension - in particular in the Mall, but also the balance of the identified route. Allow City mall design and construction to proceed in a timely and cost-effective manner.

THE OPTIONS

42. A. Do nothing (most cost later/ most disruption).
- B. Agree on future route option, do detailed design of complete route, construct tramway now through the whole of the mall (High and Cashel).
- C. Agree on future route option (to the extent necessary for City Mall redevelopment) and construct concrete base only through the whole of the mall (High Street already approved).
- D. Agree on future route option and retain/reuse existing/replacement rails in High Street as part of current re-construction. Undertake consultation in time to also install rails in Cashel Street as part of mall construction programme. (least cost/least disruption).

THE PREFERRED OPTION

43. While Option D is the most cost effective and least disruptive, **Option C** is the preferred option. This has the advantage of future proofing for the tram extension, should it be agreed to later by Council while minimising commitment to it at this time. Inclusion of the rails as well as the base (option D) would be a cheaper option and would avoid having to dig up the service lane later and potentially having to replace parts of the new surface, but may be seen as pre-determining the Council's decision-making and consultation process to extend the tram.

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Option A (do nothing) is not favoured as there is an immediate need to give some guidance to the City mall designers, and contractors. This is both in respect of the route of the future tram extension (should it be agreed to following consultation) and to allow for future proofing later stages of the project, noting that first stage demolition and construction, and stage two design work is now under way.

ASSESSMENT OF OPTIONS**The Preferred Option**

44. Option C – add concrete base only (Cashel Street) (High Street already approved)

	Benefits (current and future)	Costs (current and future)
Social	n/a	
Cultural	High Street – reconstruction of part of historic tram line, future possibility of heritage trams on original route	
Environmental	limited future disruption in Mall	Some disruption if tracks added later; temporary impact on business
Economic	Retrofitting costs reduced (c.f. option a) if tram goes ahead Businesses believe tram will bring significant economic benefit to area	Costs of adaptation of base not recouped if tram does not proceed Some possible temporary impact on businesses in mall
<p>Extent to which community outcomes are achieved:</p> <p>Tram will contribute towards:</p> <ul style="list-style-type: none"> - a city with a sustainable.. environment - a prosperous city - a safe city - a cultural and fun city - a liveable city <p>This option helps future proof for the tram</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Relatively minor - allocate a further \$314,000</p> <p>Effects on Maori:</p> <p>n/a</p> <p>Consistency with existing Council policies:</p> <p>Central City Revitalisation Strategy, Greater Christchurch UDS, Christchurch Visitor Strategy.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Strong support from Central City Business Association, Christchurch Tramway Ltd. May be opposed by those who do not favour a tram extension.</p> <p>Other relevant matters:</p> <p>Facilitates design and construction decisions for Project City Mall.</p>		

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Maintain the Status Quo (if not preferred option)

45. Option A – do nothing

	Benefits (current and future)	Costs (current and future)
Social		Tram may be less likely to be built if newly completed mall has to be dug up again - tram adds to safety in the mall.
Cultural		Tram may be less likely to be built if newly completed mall has to be dug up again - tram in the mall adds liveliness, and heritage
Environmental		Noise and disruption for a second time if and when tram is extended
Economic	Less cost now, but adds to cost later if tram goes ahead	Most costly option for future extension of tram through mall
<p>Extent to which community outcomes are achieved:</p> <p>Doing nothing would not help achieve the community outcomes identified in Options C and D</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>nil</p> <p>Effects on Maori:</p> <p>nil</p> <p>Consistency with existing Council policies:</p> <p>Yes, to the extent that the tram extension is not currently included in the LTCCP, but no in that providing for a future extension would be consistent with Central City Revitalisation, Greater Christchurch UDS and Christchurch Visitor Strategy.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Would be supported by those opposed to tram, and strongly opposed by those in support - especially Central City Business Association</p> <p>Other relevant matters:</p> <p>City mall design compromised if tram agreed later</p>		

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At Least one Other Option

46. Option D (Install concrete base + rails in both High and Cashel Streets)

	Benefits (current and future)	Costs (current and future)
Social	More likely that tram will proceed later, bringing social benefits such as safety	
Cultural	More likely that tram will proceed later - bringing liveliness and heritage to mall.	
Environmental	No future disruption - mall is only dug up once	
Economic	Most cost effective option. Allows for simplified design, and no losses due to future re-excavation	
<p>Extent to which community outcomes are achieved:</p> <p>Tram will contribute towards:</p> <ul style="list-style-type: none"> - a city with a sustainable.. environment - a prosperous city - a safe city - a cultural and fun city - a liveable city <p>This option best helps future proof for the tram</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Significant - need to allocate, by substitution, up to \$1.048M</p> <p>Effects on Maori:</p> <p>NA.</p> <p>Consistency with existing Council policies:</p> <p>Yes - Central City Revitalisation Strategy, Greater Christchurch UDS, Christchurch Visitor Strategy, but may be seen as pre-judging consultation.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Strong support from Central City Business Association, Christchurch Tramway Ltd. May be opposed by those who do not favour a tram extension.</p> <p>Other relevant matters:</p> <p>While rails in the mall do not in themselves change the status of the pedestrian mall, and the rest of extension would need to be constructed, wires erected etc before trams could use it, it will be interpreted by some as a decision to extend the tramway, ahead of an SCP. With mall design and construction proceeding now would be difficult to undertake SCP ahead of construction.</p>		

8. REPORT OF HEARINGS PANEL ON CHRISTCHURCH CITY FIRE SAFETY BYLAW 2007

Officer responsible:	Programme Manager Strong Communities
Author:	Hearings Panel on the Proposed Christchurch City Fire Safety Bylaw 2007

PURPOSE OF REPORT

1. The purpose of this report is to report on the consideration of submissions received through the Special Consultative Procedure under the Local Government Act 2002 and to recommend the Council adopt the Christchurch City Fire Safety Bylaw 2007.

EXECUTIVE SUMMARY

2. The proposal released for consultation was to revoke the Christchurch City Fires Bylaw 2006 and adopt a new bylaw (the Christchurch City Fire Safety Bylaw 2007) controlling the open air burning of vegetation and other materials for fire safety reasons, and providing for prohibitions during times of potentially serious or extreme fire hazard conditions in the whole or parts of Christchurch City.
3. The Local Government Act 2002 contains a provision enabling bylaws to be made to prevent the spread of fires involving vegetation. The provisions of the Forest and Rural Fires Act 1977 enable prohibitions to be introduced at times of extreme fire hazard conditions, and that covers all the areas outside the urban fire districts and the majority of rural use areas in the city.
4. The bylaw proposes that there would only be a prohibition for the areas designated as Urban Fire Districts when the Council considers special reasons exist to prevent an outbreak or spread of fire. Some restrictions are included in the proposal for a bylaw based on advice from the New Zealand Fire Service relating to placement and times of operation of fires in the open air for fire safety reasons. Traditional cooking fires and barbecues are excluded from the fires in the open air definition, so they would not be caught by the prohibitions. Conditions on traditional cooking fires and barbecues are included for fire safety reasons. Provision is made for exemptions from a prohibition in very limited circumstances.
5. The Council at its meeting on 12 July 2007 resolved that the Proposed Christchurch City Fire Safety Bylaw 2007 was the most appropriate way to address possible issues in the wider city area to do with fire hazards and fire safety, was in the most appropriate form, and did not give rise to any implications under the New Zealand Bill of Rights Act 1990. The Council appointed Councillors Sue Wells, Bob Shearing and Mr Stewart Miller (Chairperson, Akaroa/Wairewa Community Board) to consider and where necessary hear any submissions on the Bylaw.

FINANCIAL IMPLICATIONS

6. The expectation is that inspection and enforcement action should be significantly lower than required under the current or previous bylaws dealing with the subject. Provision is made to recover costs of providing exemptions should the Council so wish.

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

7. The budgets for the Regulatory Services group of activities in Our Community Plan 2006-2016 Volume 1 page 149, make general provision for the enforcement of bylaws. It is not anticipated that the introduction of this bylaw will significantly impact on that, and indeed may be more cost effective as the bylaw reduces the scope of the Council's involvement in burning, by limiting it to the management of burning only in defined periods of extreme fire danger.

LEGAL CONSIDERATIONS

8. Legal considerations in relation to the issues raised by the current Fires Bylaw 2006, were set out in the background section of the report to the Council on 12 July 2007, and were also discussed with the Council at the seminar on 27 February 2007.

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Section 145 of the Local Government Act 2002 provides the Council with a general bylaw-making power, and there is also a specific bylaw making power in section 146 for the purposes:

“(c) subject to sections 20 to 22 of the Forest and Rural Fires Act 1977, of preventing the spread of fires involving vegetation.”

The Council has the power to review bylaws (section 158) and may revoke bylaws (section 156), but can only do so after considering the matters in section 155, and it must follow the special consultative procedure.

9. The legal considerations in relation to the review and adoption of a new bylaw largely arise from section 155 of the Local Government Act 2002. This sets out the matters that must be determined to decide whether a bylaw is appropriate, as follows:
 - “(1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
 - (2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—*
 - (a) is the most appropriate form of bylaw; and*
 - (b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.*
 - (3) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.”*
10. In order to comply with section 155 the Council needed to formally resolve that a bylaw is the most appropriate way to deal with this issue, and if so, that the proposed form of bylaw is the most appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act 1990. The conclusion reached was that the bylaw was the most appropriate way to deal with the issues covered by the proposed bylaw. The matters to be controlled are not covered by other legislation or Regional Council provisions. The LGA contemplates that bylaws will be used for the purpose of preventing the spread of fires. The Legal Services Unit also considers that the form of the bylaw is the most appropriate form and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990. In fact, by removing the total prohibition this bylaw is less restrictive on rights than the 2006 bylaw.
11. In discussions with the officers of Environment Canterbury it has been made clear that the air quality and nuisance issues associated with burning in the open are covered by the plans made under the Resource Management Act 1991 and they have accepted it is their role to enforce such provisions. The introduction of the proposed bylaw by this Council will clarify the respective roles of the two Councils in regard to the issue of fires in the open and the proposed bylaw in an explanatory note draws attention to the Regional Council's role in this matter.

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

12. Yes, as above, and in the report to Council on the delegation of the dispensing power for the purposes of the Fires Bylaw 2006, considered by the Council on 22 March 2007.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

13. See below in clause 14 and Our Community Plan Volume 1 Page 126 Parks, open spaces and waterways *“Fire hazard to adjoining properties”* identifies that fire hazard to adjoining properties may be a potential negative effects of the Parks, open space and waterways group of activities.

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

14. The proposed bylaw is intended to provide a level of regulation over open fires in periods of defined danger. The bylaw is consistent with the commitment in the Community Plan Volume 1 page 145 *“Legislative requirements are enforced to ensure the safety and health of people”*.

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ALIGNMENT WITH STRATEGIES

15. No specific strategies are related to this subject.

Do the recommendations align with the Council's strategies?

16. Aligns with strategic direction of reducing the likelihood and impact of hazards and emergencies. See Our Community Plan 2006-2016 Volume 1 page 64.

CONSULTATION FULFILMENT

17. Through the Bylaw Review Subcommittee Community Boards were given the opportunity to comment on the initial draft and some changes were included as a result of this initial consultation. The bylaw, statement of proposal, and summary of information were adopted for consultation and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website. Notice of the proposed bylaw was given by mail to the Department of Conservation, the New Zealand Fire Service, and all the Fire Chiefs in Fire Districts in the Banks Peninsula Ward. Public notice of the proposal was given in "The Press" and "Christchurch Star" newspapers and on the Council's website on 18 July 2007. Public notice was also given in the "Akaroa Mail" and "Bay Harbour News", as close as possible to 18 July 2007. The period within which written submissions could be made to the Council was between 18 July 2007 and 17 August 2007. Following adoption by the Council and as part of the Special Consultative Procedure all residents groups, and a number of possible stakeholder groups in addition to those individuals who expressed interest in the subject and the persons who applied for dispensations to burn under the previous 2006 bylaw were sent the bylaw and the Statement of Proposal.
18. Fifty-one submissions were received from 55 persons or organisations and a copy of those submissions is tabled. Thirteen of those making submissions originally indicated they wished to speak before the Hearings Panel. The table attached (Attachment 1) sets out each of the submitters and the matters they submitted on. An analysis of the submissions with officer's comments on each of the substantive issues is also attached (Attachment 2).
19. On the basis of the submissions received 10 mentioned acceptance of the Christchurch City Fire Safety Bylaw 2007 either directly or conditionally, while a further 30 appear to support the bylaw, by indicating they wished to continue burning garden rubbish, or objected to the prohibitions placed on their activities by the 2006 bylaw. This represents about 78% of the total submissions. Some have raised matters relating to the content of the bylaw. The majority of those not supporting the bylaw consider that no outdoor fires should be permitted, largely on the grounds of the pollution they create, but also on the grounds that green waste should be disposed of in a more sustainable manner. Two submissions suggested that educational means of controlling fire risks should be introduced rather than regulatory methods as with this bylaw.
20. Copies of all submissions were considered by the Panel and they heard those persons who indicated they wished to present their submissions verbally. Notes of the proceedings of the Panel are attached (Attachment 3). Following consideration of all submissions a number of amendments were considered, some editorial, and others of a clarifying nature and these have been included in the recommended Christchurch City Fire Safety Bylaw 2007 (Attachment 4).
21. Attention was drawn to one written submission which had identified some grammatical and punctuation errors and it was agreed that the appropriate corrections be made. Another point made by the same submitter in relation to clause 6 (setting out how public notification of any prohibition was to be made) was that notice should be given by radio broadcast **and** by notice in a newspaper, whereas the proposed bylaw had these as alternatives (**or**, rather than and). After discussion, the suggestion was not adopted on the ground that notification might well be required in urgent circumstances, where radio was an effective option but the delays inherent in newspaper advertising could not be afforded.

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22. Members of the Panel discussed clauses 6(1) and 6(2) further and, noting the wording of similar provisions in the Rural Fires Act, recommended that the wording in the proposed bylaw be amended to read as follows:

"6 PROHIBITION OF FIRES DURING PERIODS OF EXTREME FIRE HAZARD

- (1) The Council may at any time where in its opinion special reason exists or may exist to prevent the outbreak or spread of fire, prohibit the lighting of fires in the open air for any specified period of time within the whole or any specified part of the city referred to in clause 4.
- (2) The Council shall give public notice of any prohibition made under clause 6(1) by:
- (a) broadcast from a ~~national or commercial~~ radio station ~~operating within the district~~ broadcasting in the locality; or
 - (b) notice in a ~~daily~~ newspaper circulating ~~throughout the district~~ in the locality."
23. It was noted that submission number 47 (Andrea Lobb for Nga Papatipu Runanga, Te Rununga O Ngai Tahu) had included the valid point that the plural of hangi is hangi, not hangis as in the heading to clause 9 in the proposed bylaw. It was recommended that this correction be made.
24. The Panel noted that the 'five metre clearance', about which a number of submitters had complained, had been in the city's bylaws for over 20 years. The Panel also noted the comment of Assistant Fire Commander Mark Chubb, that such a requirement was not "severe or conservative" and that, in his view, "it is more likely to be insufficient, than excessive". The Panel recommended that the provision be retained.
25. Minor changes were recommended as follows:
- in clause 4 by the insertion of the word "Act" after the words "*the Fire Service*";
 - in clause 8 by deleting the comma after the word "*shall*"; and
 - in clause 10(4) by amending "9(1)" to read "10(1)".

26. Subsequent advice from the Legal Services Unit in regard to clause 6(2) was that it is better drafting practice to say:

"(2) *The Council shall give public notice of any prohibition made under clause 6(1) by:*

- (a) *broadcast from a radio station broadcasting in the area subject to the prohibition;*
- or*
- (b) *notice in a newspaper circulating in the area subject to the prohibition."*

If the clause just referred to "locality" it could be open to question which locality is the clause referring to. The members of the Panel recommend that this change be made.

27. The Panel unanimously confirmed their recommendations to the Council.

HEARINGS PANEL RECOMMENDATION

It is recommended that the Council resolve:

- (a) To adopt the Christchurch City Fire Safety Bylaw 2007 attached to this report to come into force on 15 October 2007.
- (b) To advertise the adoption of the Bylaw in "The Press" and the "Christchurch Star" on Wednesday, 10 October 2007 and other suitable community newspapers at or close to that time.
- (c) That all submitters be advised of the coming into force of the bylaw and copies be sent to all Residents Groups, Chief Fire Officers, Department of Conservation, Federated Farmers, those interested persons who had applied for dispensations from the 2006 Fires Bylaw.

9. NOTICES OF MOTION

10. QUESTIONS

11. RESOLUTION TO EXCLUDE THE PUBLIC

Attached.