

28. 2. 2008

**REGULATORY AND PLANNING COMMITTEE
7 FEBRUARY 2008**

**A meeting of the Regulatory and Planning Committee
was held on Thursday 7 February 2008 at 9.30am
(and subsequently adjourned to 9.30am on Wednesday 13 February 2008)**

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

IN ATTENDANCE: **Christchurch City Council**
Councillors Barry Corbett, Bob Shearing (until 12 noon),
Mike Wall (until 12 noon and from 1pm), and Norm Withers

Community Board
Val Carter (to 11.10am) and Stewart Miller to (11.10am).


APOLOGIES: An apology for absence was received and accepted from Megan Evans.

An apology for lateness was received from Councillor Sally Buck, who arrived at 11.10am and was absent for clause 2.

The Committee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. PROPOSED DOG CONTROL POLICY AND BYLAW REVIEW



General Manager responsible:	General Manager Regulation and Democracy, DDI 941-8462
Officer responsible:	Inspections and Enforcement Manager
Authors:	Mark Vincent

PURPOSE OF REPORT

1. The purpose of this report is to consider the adoption of a proposed Dog Control Policy and bylaw under the Dog Control Act 1996 for the City of Christchurch.

EXECUTIVE SUMMARY

2. The Christchurch City Dog Control Bylaw 1997 is required, under section 158 of the Local Government Act 2002, to be reviewed prior to June 2008. The Banks Peninsula District Council Dog Control Bylaw 2004 is required to be reviewed prior to 15 December 2009.
3. The Dog Control Act 1996 (the Act) is the national legal instrument controlling dogs in New Zealand and has the objectives of requiring the registration of dogs; making provisions in relation to dangerous dogs; imposing obligations on owners to ensure dogs do not create a nuisance or injure or endanger any person; and do not endanger or injure any stock, other animals or wildlife. The Council has a duty under the Act to adopt a policy on dogs, which may specify the nature and application of any dog control bylaw.
4. The policy may also specify other non bylaw matters such as fees; education programmes; classification of owners; and matters to do with infringement notices.
5. Section 10(4) of the Act states that the Council, in adopting a policy under section 10 must have regard to:
 - (a) the need to minimise danger, distress, and nuisance to the community generally; and

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- (b) the need to avoid the inherent danger in allowing dogs to have uncontrolled access to public places that are frequented by children, whether or not the children are accompanied by adults; and
 - (c) the importance of enabling, to the extent that is practicable, the public (including families) to use streets and public amenities without fear of attack or intimidation by dogs; and
 - (d) the exercise and recreational needs of dogs and their owners.
6. Section 20 of the Act provides for the making of dog control bylaws; any territorial authority may, in accordance with the Local Government Act 2002, make bylaws (within specified guidelines) for the purposes of complying with the adopted policy.
 7. In 2006 Banks Peninsula District was merged with Christchurch City, and thus the need exists to incorporate into one policy the Banks Peninsula Dog Control Policy and Bylaw and the City Council Dog Control Policy and Bylaw as they are now under the same jurisdiction, thus ensuring consistency in intent, application and enforcement of dog controls across the district, and where appropriate nominating specific approaches for specific management requirements.
 8. A copy of the current Christchurch City Dog Control Policy 1996 can be viewed on the Council website at <http://www.ccc.govt.nz/Policy/>. The Banks Peninsula Dog Control Policy can be viewed at <http://www.ccc.govt.nz/policy/bankspeninsula/dogcontrolpolicy.pdf>. Both the Christchurch City Dog Control Bylaw and the Banks Peninsula Dog Control Bylaw can be viewed on the City Council website in the bylaw register at <http://www.ccc.govt.nz/bylaws/>.
 9. During the past two years there have been significant additions and changes to the areas of land under the Council's control, including parks and reserves and foreshore areas. There has also been an increase in knowledge and awareness of the significant values of some areas e.g. mudflats, where no dog controls are in place. These areas all have specific amenity, recreation and wildlife values which need to be supported and/or protected.
 10. The total number of dogs registered in Christchurch City has risen by 5.9% from 28,569 in the 2004/05 financial year to 30,376 in the 2006/07 financial year. During this same period the Banks Peninsula District Council dog registration statistics were merged with the Christchurch City Council statistics, accounting for the majority of the increase. It is critical to ensure both dog owners/dogs, including working dogs, and non dog owner requirements are satisfactorily catered for across the wider region, however this needs to be aligned with park and reserve area management practices.
 11. There has been an increase in the number of vicious attacks by dogs on people both nationally and in Christchurch City and these have all received high profile media coverage. Although the number of reported attacks on people in Christchurch City dropped from 190 (2004/05) to 174 (2006/07), there is still strong evidence for the need for education (of both dog owners and the general public) and enforcement to ensure this attack rate decreases.
 12. To assist with the protection of specific amenity, recreation and wildlife values and the community health and safety issues associated with dogs in public places the protection status of each area has been reviewed and documented. Some areas are new and have initial dog control status designations. Other areas are recommended for enhanced dog protection (prohibited, restrained and not specified) and are included in the 'Development' option. The reason for protection will be specific to each area, but may include aspects such as community health and protection, safety and hygiene; wildlife habitat or breeding seasons; or sensitive environmental areas. The current and proposed control status (and any change) is documented within the Proposed Dog Control Policy.
 13. For the reasons mentioned above, it is considered that a bylaw is the most appropriate way to address the dog control problems as outlined. Both a new policy and bylaw are required, as the amalgamation of the Banks Peninsula District and the Christchurch City Council has resulted in two Dog Control Policies and Bylaws being in existence. Consequently the form of the recommended bylaw is also considered to be in the most appropriate form and there do not appear to be any implications raised by the bylaw in terms of the New Zealand Bill of Rights Act 1990.

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FINANCIAL IMPLICATIONS

14. If the 'Development' option or 'Restrained' option is adopted by the Council then there may be significant financial implications, both in the areas of enforcement and in relation to control signage.
15. Should the 'Consolidation' option be adopted by the Council then the financial implications would be minimal as under the amalgamation these responsibilities already exist.
16. The Council and the community, through consultation, need to be mindful therefore that if the 'Development' option is approved, the increased number of prohibited, restrained and not-specified dog areas could have a direct cost implication, depending on the number and location of sites.
17. Because a larger number of new prohibited, restrained and not specified dog areas have been included in the 'Development' option significant funding is likely to be required to cover the **cost of the enforcement necessary** to monitor and service these additional areas.
18. The implementation of the 'Development' option could be managed from an enforcement perspective on a respond and investigate approach as issues arise in these areas. This can be done within existing resources/FTE's. However, there will be a need for Animal Control to monitor the number of complaints/instances over a 12 month period to determine the true service demand that the new prohibited and restrained areas will create. During this 12 month period it is intended to utilise other Council staff such as Regional Park Rangers, to assist with monitoring compliance of the policy and bylaw. Should there be a substantial increase in service demand then the 12 month monitoring period will allow a business case to be created to gain additional resources (i.e. Animal Control Officer FTE's).
19. If, however, the Council, as part of the policy review requires a more proactive dog control approach as a result of the additional prohibited and restrained areas detailed in the 'Development' option then the best estimates as to the additional cost of this proactive approach is two FTE's or \$120 - \$140,000p.a. (salary plus equipment cost for two additional FTE animal control officers required to monitor and enforce the additional specified dog areas). A more proactive approach would involve a patrol and education based service with regular visits to these areas, therefore, preventing issues before they arise. This proactive approach is currently provided in some high public use areas within Christchurch City but not all prohibited etc areas within the City.
20. The 'Restrained' option may also have significant financial implications. Its general rule that dogs are to be restrained with a leash in public places will be easy for members of the public to retain and consequently may result in an escalation in the number of complaints received from the public to which dog control staff will need to respond. It is difficult to quantify the extent of these financial implications and again monitoring over 12 month would be carried out with a business case being made after that period, if necessary, for additional resources.
21. If a more proactive dog control approach is required by the Council under the 'Restrained' option then the financial implications would be similar to that for a proactive approach under the Development option i.e. an additional \$120-\$140,000 p.a.
22. Any additional **budget requirement for enforcement** could be funded through dog registration fees, infringement notice revenue, rates, or a combination of these.
23. The current Dog Control account is funded 92% from dog registration fees and 8% from rates (to recognise the public good component of the service).
24. Should the Council be minded to place all the additional \$120-\$140,000 cost on dog owners, there would be a consequential need to increase dog registration fees by approximately \$5 across the board. The current Dog Registration Fee Schedule is separately circulated.

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25. If the Council is minded to have a more proactive dog control approach (see paragraph 18) and adopts either the 'Development' or 'Restrained' options, then it should indicate to staff how in broad terms it wants to apportion funding of the additional enforcement costs between the different sources available, so that more detailed financial modelling can be carried out.
26. In addition there will be costs associated with informing the public on the new bylaw once it is in place. Different levels of signage will be needed at different parks and other public places. This will be done in a variety of ways. All the relevant information will be available on the Council's website, including maps showing specific details of some dog restrained and prohibited areas. Animal Control and Greenspace produce a number of information leaflets - these will be updated to include updated bylaws. The signage on Parks will be reviewed and 'dog signs' will need to be installed at key entry points and adjacent to playgrounds to indicate any dog restrictions that apply. Street signs and stencilled logos on footpaths will be used where needed. There will be media releases done once the new bylaws are in place. The Animal Control team will continue to do dog education programmes with school groups and others. Estimates for additional signage are \$100,000 based on a range of options (from signs on poles through to spray-painted stencils) and the range of urban and regional parks.
27. A bid for new signage may need to be made at the next LTCCP round. Until then priority signs will be covered by existing budgets.

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

28. Yes, however depending on the option chosen, (the options for consideration being set out at the end of this report), there may be a requirement to make application for budgetary provision for more signage for restricted and prohibited dog areas, in the future annual plan budget rounds. Depending on the final option chosen, there may also be a need for an increase in enforcement costs, the funding for which will depend on the indication from Council of how any increase in enforcement costs is to be funded, (See section 20 above).

LEGAL CONSIDERATIONS

29. The legal considerations in relation to the review and adoption of a new bylaw, including one made under the Dog Control Act 1996 (by virtue of sections 10AA and 20 of that Act) largely arise from section 155 of the Local Government Act 2002. This sets out the matters that must be determined 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.*
 - (c) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.”*

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30. In order to comply with section 155 the Council needs 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 in the background section below is that this bylaw is 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 Dog Control Act 1996 is the predominant legal instrument controlling dogs in New Zealand, but it is operated and enforced through territorial authorities. The Dog Control Act contemplates that bylaws will be used for the purpose of setting in place operation and enforcement mechanisms for controlling dogs in the region. 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.
31. Both the proposed bylaw and proposed policy must be consulted on by way of the special consultative procedure, as required by sections 10, 10AA and 20 of the Dog Control Act 1996. The special consultative procedure requires that the Council must prepare and resolve on a statement of proposal (which must include the proposed bylaw and policy, set out the reasons for the proposal and include a report on the Council's determinations under section 155) and a summary of information (which must provide a fair representation of the major matters in the statement of proposal, be distributed as widely as reasonably practicable and as determined by the Council, must indicate where the statement of proposal can be inspected and a copy obtained, and state the submissions period). In addition to giving public notice of the proposal, section 10(2) of the Act requires that the Council give notice of the proposed policy to every person who is, according to its register, the owner of a dog. Following the submissions period, the Council will hear from anyone who wishes to be heard, consider the submissions made and then resolve on the final form of the policy and the bylaw.

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

32. Yes

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?**

33. Yes: *The Council minimises potential hazards and nuisances from dogs and wandering stock* (Ref. LTCCP Volume 1 page 146).

ALIGNMENT WITH STRATEGIES**Do the recommendations align with the Council's strategies?**

34. Strategic Directions require the *"Provision of a variety of safe, accessible and welcoming local parks, open spaces and waterways"* under Objective 5 Strengthen the Garden City Image; and under Objective 6 *Identify, protect and enhance the city's native and exotic ecosystems "Encouraging the community to learn about and care for biodiversity and ecosystems."*
35. The Draft Biodiversity Strategy will be considered by the Council early in 2008. Dogs are specifically identified as having a significant impact on penguin populations in the technical report - 'Dog control is a major issue in urban areas if penguins are again to form a prominent part of our urban wildlife.' Whilst dogs are not specifically identified elsewhere in the technical report, they do have a significant impact on some types of wildlife particularly on the seashore and mudflats. A number of the areas identified for tighter dog control measures (prohibited or restrained areas) in the 'Development' option correspond with those identified in the draft Biodiversity Strategy as being important habitats for biodiversity in the concept plans contained in the draft Strategy.

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CONSULTATION FULFILMENT

36. Through a Council Seminar (June 2007) Councillors gave initial input into the need for the breadth and the potential content for consideration when reviewing the Dog Control Policy and Bylaw.
37. There has been no input from Community Boards to the Dog Control Policy and Bylaw at this stage. This results from the absence of a process for doing so during and following the local body elections, coupled with the pressure to review a significant number of bylaws prior to 30 June 2008 to meet statutory timelines. Community Boards will have the opportunity to express their views on the proposed Dog Control Policy and Bylaw through the Special Consultative Procedure.
38. Initial discussions have taken place with Mahaanui Kurataiao (MKT). However due to the timeframes involved, the number of bylaw reviews for MKT to consider, MKT's early stages of development and its priorities, effective consultation has not yet taken place. MKT will have the opportunity to express its views on the Proposed Dog Control Policy and Bylaw during the Special Consultative Procedure.
39. Once adopted by the Council and as part of the Special Consultative Procedure, all dog owners and a number of possible stakeholder groups in addition to those individuals who expressed interest in the subject, will be sent information on the bylaw and the Policy. The estimated cost of the special consultative procedure communication is \$50,000. This will be funded from the Dog Control account. Wider publicity, beyond that legislatively required, will be given to the bylaw once it is adopted as a proposal by the Council including clarifying the distinction between dog control areas, documenting the areas and their dog control status and other areas covered by the bylaw. There will be further costs involved in informing dog owners and the general public of the new policy and bylaw once adopted.

STAFF RECOMMENDATION

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

- (a) Under section 155 of the Local Government Act 2002 the draft Christchurch City Dog Control Bylaw is the most appropriate way to address the dog control issues covered by the draft bylaw, is in the most appropriate form, and does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- (b) The draft bylaw (Appendix B - separately circulated) and draft Dog Control Policy (Appendix A - separately circulated) based on the 'Development' option be adopted for consultation by way of the special consultative procedure.
- (c) The statement of proposal (Appendix C - separately circulated) (incorporating the draft bylaw and draft policy) and the summary of information (Appendix D - separately circulated) be adopted and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website.
- (d) Notice of the proposal be given by mail to all registered dog owners in the district.
- (e) Public notice of the proposal be given in "The Press" and "Christchurch Star" newspapers and on the Council's website on Saturday 1 March 2008, with public notice also to be given in the "Akaroa Mail", "Diamond Harbour Herald" and other community newspapers distributed in the Christchurch area as close as possible to Saturday 1 March 2008.
- (f) The period within which written submissions may be made to the Council be between Saturday 1 March and Wednesday 2 April 2008.
- (g) A Hearings Panel comprising (the members thereof to be named at the present Council meeting) be appointed to consider and where necessary hear any submissions on the draft bylaw and draft policy, and report back to the Council with its recommendations thereon.

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COMMITTEE RECOMMENDATIONS

At its meeting held on 7 February 2008 the Regulatory and Planning Committee adopted and recommended to the Council that:

- (a) Under section 155 of the Local Government Act 2002 the Proposed Christchurch City Dog Control Bylaw is the most appropriate way to address the dog control issues covered by the proposed bylaw, is in the most appropriate form, and does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- (b) The proposed bylaw (Appendix B - separately circulated) and proposed Dog Control Policy (Appendix A - separately circulated) based on the 'Development' option be adopted for consultation by way of the special consultative procedure.
- (c) The statement of proposal (separately circulated) (incorporating the proposed bylaw and proposed policy) and the summary of information (separately circulated) be adopted and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website.
- (d) Notice of the proposal be given by mail to all registered dog owners in the district.
- (e) Public notice of the proposal be given in "The Press" and "Christchurch Star" newspapers and on the Council's website on Wednesday 26 March 2008, with public notice also to be given in the "Akaroa Mail" and other community newspapers distributed in the Christchurch area as close as possible to Wednesday 26 March 2008.
- (f) The period within which written submissions may be made to the Council be between Wednesday 26 March and 10am, Monday 28 April 2008.
- (g) A Hearings Panel comprising (the members thereof to be named at the present Council meeting) be appointed to consider and where necessary hear any submissions on the draft bylaw and draft policy, and report back to the Council with its recommendations thereon.

BACKGROUND (THE ISSUES)

Background information

- 40. In undertaking the review of the bylaws, this must be carried out in accordance with section 155(1) of the Local Government Act 2002. This section requires that the Council is satisfied that a bylaw is necessary, and the perceived problems cannot be dealt with in any other manner. However, in the case of bylaws made under the Dog Control Act 1996 (the Act) prior to their introduction the Council must adopt a policy in respect of dogs in the district which must specify the nature and application of any bylaws made, or to be made, under section 20 of the Act. The policy must also identify any public places in which dogs are to be prohibited or controlled on a leash, and how dogs classified as menacing dogs are dealt with. A number of matters also may be contained in the policy relating to fees, owner education programmes, dog obedience courses, classification of owners, disqualification of owners, and the issuing of infringement notices.
- 41. The purpose of this section of the report is to outline the legal requirements for Local Authorities in relation to Dog Control under the Dog Control Act 1996, the context and content of a Dog Control Policy and Bylaw for Christchurch City Council and the justification for a Bylaw

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Section 155 considerations

42. A useful guide to considering the matters under section 155 (as quoted above) is the *Code of Good Regulatory Practice, 1997* which suggests the following should be considered:
- *Efficiency by adopting only regulations for which the costs to society are justified by the benefits. To achieve objectives at the lowest cost taking into account alternatives.*
 - *Effectiveness to ensure it can be complied with and enforced at the lowest possible cost.*
 - *Transparency by defining the nature and extent of the problem and evaluating the need for action.*
 - *Clarity in making things as simple as possible, to use plain language where possible, and keeping discretion to a minimum.*
 - *Regulation should be fair and treat those affected equitably. Any obligations or standards should be imposed impartially and consistently.*¹

In addition guidance provided by Local Government New Zealand states the following matters should be taken into account at this stage: *What is the problem?; Have we got enough information?; Who is affected or interested?; What is our objective?; What is the root cause of the problem – not the symptom?*² In the following paragraphs these issues are addressed in the context of determining a need for any bylaw.

43. The Dog Control Act 1996 (the Act) is the national legal instrument controlling dogs in New Zealand and has the objectives of requiring the registration of dogs; making provisions in relation to dangerous dogs; imposing obligations on owners to ensure dogs do not create a nuisance or injure or endanger any person; and do not endanger or injure any stock, other animals or wildlife. Territorial authorities are given the role of undertaking functions under the Act, including registering dogs in its area. Section 10 of the Act requires territorial authorities to adopt a policy on dogs and sets the process for doing this which includes its adoption through the special consultative procedure under the Local Government Act 2002. Furthermore, in accordance with the Act the territorial authority must have regard to the section 10(4) matters, as quoted under clause 3, when adopting a policy.
44. These matters focus on minimising danger, distress and nuisance; removing the inherent danger of dogs having uncontrolled access to public places frequented by children; enabling the public to use streets and public amenities without fear of attack or intimidation by dogs; while also considering the exercise and recreational needs of dogs and their owners. Any policy **must** specify any bylaws to be made under the Act; areas in which dogs are to be prohibited or restrained; areas in which no prohibitions or restraints are applied; and areas designated as 'dog exercise areas'. The policy may also specify other non-bylaw matters such as fees; education programmes; classification of owners; and matters to do with infringement notices.
45. The Act under section 20, also provides for the introduction of dog control bylaws where any territorial authority may, in accordance with the Local Government Act 2002, make bylaws (within specified guidelines) for the purposes of complying with the adopted policy. The matters that may be controlled under bylaw include the prohibition of dogs from specified areas; requiring leashing in certain areas; requiring dogs to be kept confined in certain circumstances; limiting the numbers of dogs that can be kept on premises; and making provision for impounding. Under the Dog Control Amendment Act 2003 territorial authorities were required to revise their dog control policies so there was more emphasis on public safety and were also required to participate in the National Dog Database and micro-chipping of dogs. Under the Dog Control Amendment Act 2006 territorial authorities were required to strengthen policies in relation to dealing with menacing and dangerous dogs. Thus, to meet the objects of the Act and the obligations of the Act, as a territorial authority the Christchurch City Council must adopt a policy on dog control.

¹ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

² *The Knowhow Guide to the Regulatory and Enforcement Provisions of the Local Government Act 2002*, SOLGM, Local Government New Zealand, Department of Internal Affairs, no date

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46. The Dog Control Amendment Acts 2004 and 2006 lay out an inventory of tools for territorial authorities to use to crack down on unregistered dogs, roaming dogs, and irresponsible owners. Fines and penalties have been increased for erring owners, and sensible steps have been taken to enable territorial authorities to take a more preventative approach to keeping children clear of uncontrolled dogs in public spaces. It is necessary to revise the Christchurch City Council Dog Control Policy and Bylaw to ensure the objects of these amendments to the Act are incorporated.
47. In 2006 Banks Peninsula District was merged with Christchurch City, and thus the need exists to incorporate the Banks Peninsula Dog Control Policy and Bylaw in the City Council Dog Control Policy and Bylaw as they are now under the same jurisdiction; thus ensuring consistency in intent, application and enforcement of dog controls across the region and where appropriate nominating specific approaches for specific management requirements. Alongside this is the need to ensure that the controls for rural and urban dogs are appropriately addressed, as the amalgamation of Banks Peninsula District resulted in the inclusion of farming areas and thus working rural dogs, into the Christchurch City Council's jurisdiction.
48. During the past two years there have been significant additions and changes to the areas of land under Council control, including parks and reserves and foreshore areas. These areas all have specific amenity, recreation and wildlife values which need to be supported and/or protected.
49. Within the current policies and bylaws there are some areas of land that require reclassification of their dog control status, for example to align them with the need to keep dogs separate from dog-sensitive wildlife areas in reserves and foreshore areas in keeping with the draft Biodiversity Strategy.
50. There has also been an increase in knowledge and awareness of the significant values of some areas e.g. mudflats, saltmarshes, wildlife breeding habitats and ecologically sensitive sites, under Council control and management and the potential impact of dogs on these areas if allowed to continue to enter these areas. In order to fully protect the environmental values of these areas a review of the impact of dogs 'at large' in these areas has been undertaken and dog control status recommendations made in order to best protect the significant values for each area. The undertaking of this work is in support of the draft Biodiversity Strategy which will be presented to Council to adopt as policy early this year.
51. Several parks especially on the Port Hills and Banks Peninsula are grazed. It is important the dogs are kept on leads (restrained) to minimise the disturbance of stock. People passing through grazed land with dogs on a lead pose little problems, however there has been an increase of complaints of dogs chasing and in some cases mauling stock. It may be necessary to close dog access to some grazing land at certain times of the year, such as during lambing.
52. A number of Department of Conservation scenic reserves on Banks Peninsula were included in the present Banks Peninsula Dog Control Bylaw. The Minister of Conservation has different dog control responsibilities on scenic reserves as set out in the Conservation Act 1987, than local authorities, and therefore these reserves need to be removed from the schedules, before they are attached to the proposed Christchurch City Council Dog Controlled Bylaw, e.g. Palm Gully Scenic Reserve.
53. In addition, a number of reserves that are leased out to private enterprise were included in the dog control areas for Banks Peninsula. As these five areas are leased with specific contractual agreements into private enterprise they cannot be designated as dog control areas and need to be removed from the Dog Control Bylaw.

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54. The total number of dogs registered in Christchurch City has risen by 5.9% from 28,569 in the 2004/05 financial year to 30,376 in the 2006/07 financial year. During this same period the Banks Peninsula District Council dog registration statistics were merged with the Christchurch City Council statistics, accounting for the majority of the increase. In reviewing the Dog Control Policy the requirements of dog owners/dogs and non dog owners' have been carefully considered across the district. These have been aligned with park and reserve area management practices and the collation of supporting knowledge and information. As a result specific areas with particular values and resources have been identified that need protection from dogs. It is through a bylaw that these areas can receive the necessary protection, by imposing partial or full dog control mechanisms to control dog access e.g. prohibit access or specify restraint required.
55. There has been an increase in the number of vicious attacks by dogs on people both nationally and in Christchurch City and these have all received high profile media coverage. Although the number of reported attacks on people in Christchurch City Council region dropped from 190 (2004/05) to 174 (2006/07), there is still strong evidence for the need for education (of both dog owners and the general public) and enforcement to ensure this attack rate decreases. It is considered that to achieve the level of input required for education, monitoring and enforcement to achieve the decrease in attack outcome a Dog Control Policy and Bylaw is essential to enable the Council to effectively manage dog control issues.
56. For the reasons mentioned above, it is considered that a bylaw is the most appropriate way to address the dog control problems as outlined. The Dog Control Bylaw is required to cover provisions relating to prohibiting dogs from specified public places (e.g. around children's play areas and swimming areas on beaches) and requiring dogs to be leashed in public places such as footpaths. A review is also required as the amalgamation of Banks Peninsula District Council and Christchurch City Council has resulted in two Dog Control Policies and Bylaws are in existence to cover the now amalgamated jurisdiction. Consequently the form of the recommended bylaw is also considered to be in the most appropriate form and there do not appear to be any implications raised by the bylaw in terms of the New Zealand Bill of Rights Act 1990.

THE OBJECTIVE

57. The objective is to introduce a new policy that will replace both Councils' former policies. It is also to have a bylaw that will continue to reduce the incidence of dog related issues (both to human, wildlife, animals, stock and land) through the application of controls that enable dog access that is sympathetic to the needs of the community and the environment. The controls recommended under the bylaw endeavour to address these potential issue areas. The bylaw is to replace, by revocation, the Christchurch City Dog Control Bylaw 2006 and the Banks Peninsula District Council Dog Control Bylaw 2004.

THE OPTIONS

58. The 'Restrained' option is based on the requirement that all dogs in public places must be restrained on a leash. Exceptions to this requirement will be areas identified and listed specifically as prohibited or not specified areas. This option would also incorporate the amalgamation of the two current policies and bylaws (Christchurch City Council and Banks Peninsula District Council). Further variations of this option could incorporate the requirement to restrain dogs within a certain class of place eg. urban parks.
59. The 'Consolidation' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other 'dog control' clauses to simplify the bylaw and provide some additional clarity. This option would also include the adoption of consistent access times and prohibition of dogs to these areas within these times. No new or re-designated access would be added to the dog control areas at this time.

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60. The 'Do Nothing – Minimal Change' option would mean the retention of two current bylaws: the Christchurch City Council Bylaw which covers the pre-amalgamation CCC district and the Banks Peninsula District Council Bylaw which covers the BPDC area pre-amalgamation. However within this option as a minimum the CCC Policy and Bylaw must be reviewed by June 2008 as prescribed by the Local Government Act. Aside from administering two policies and bylaws, there are also other anomalies between the two Dog Control bylaws and policies which has the potential to create confusion for the public accessing dog control areas (e.g. different access times for beaches in Banks Peninsula area than in the Christchurch area) and may hinder the effective and efficient management of dog control issues by the Animal Control Officers. For these reasons it is not considered this option should be adopted.
61. A fifth option would be to update both the current policies and bylaws and maintain two separate regional documents but under the one jurisdiction, ie a Policy and Bylaw relating to specified boundaries in Banks Peninsula and a Policy and Bylaw relating to the balance of Christchurch City. Although this would create the least change for the respective communities it would be cumbersome and inefficient to manage; it could also generate potentially conflicting implementation of Christchurch City Council policy e.g. management and protection of wildlife areas if updated policies and bylaws were based on their current clauses within Banks Peninsula.

THE PREFERRED OPTION

62. The 'Development' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other "dog control" clauses to simplify and align the bylaws and provide some additional clarity. In addition further areas for enhanced dog protection (prohibited, restrained and not specified) are included in the 'Development' option. The reason for protection will be specific to each area, but may include aspects such as community health, safety and hygiene; wildlife habitat or breeding seasons; or sensitive environmental areas. Although a great deal more information will be contained within the merged policy and bylaw this option will create a greater clarity amongst members of the public moving within the region and for those enforcing the policy and bylaw, which will make administration of the bylaw simpler. It would also allow for greater alignment between other Christchurch City Council policy and strategic outcomes e.g. draft Biodiversity Strategy, relating to management of areas such as wildlife, protection of children from dog attacks and fouling and health and safety issues.

ASSESSMENT OF OPTIONS

The Preferred Option

63. The 'Development' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other "dog control" clauses to simplify and align the bylaws and provide some additional clarity. In addition further areas for enhanced dog protection (prohibited, restrained and not specified) are included in the 'Development' option. The reason for protection will be specific to each area, but may include aspects such as community health, safety and hygiene; wildlife habitat or breeding seasons; or sensitive environmental areas. Although a great deal more information will be contained within the merged policy and bylaw this option will create a greater clarity amongst members of the public moving within the region and for those enforcing the policy and bylaw, which will make administration of the bylaw simpler. It would also allow for greater alignment between other Christchurch City Council policy and strategic outcomes e.g. draft Biodiversity Strategy, relating to management of areas such as wildlife, protection of children from dog attacks and fouling and health and safety issues.

1 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	Gives dog owners and other citizens clarity around where and when dogs can access areas and what some of the competing interests are in relation to areas. In grazing areas there is a need to enable walking access while protecting stock by keeping dogs restrained while in these areas.	Possible increase in the number of complaints owing to the higher number of dog areas designated as prohibited and restrained. Once a new policy and bylaw is in place there will be a need to inform dog owners, park users and the public in general about the new dog bylaws in the City.
Cultural	None specific.	None specific.
Environmental	Protection of areas that have been identified as significant due to their wildlife or habitat significance. Aligned to the draft Biodiversity Strategy.	None specific.
Economic	More cost effective to manage as it creates one policy for the region. Protection of environmental and wildlife areas now will result in some economic savings, rather than having to spend more later to protect these areas, which will be in alignment with the draft Biodiversity Strategy, the changes being required to be processed through the Special Consultation Process. Environmental losses may also continue to accrue through allowing not specified dog access.	Should the proposed policy be adopted there may be significant financial implications for the Council in terms of additional enforcement costs. Refer to points 17, 18 and 19 of this report. There may also be costs to the Council associated with the provision of signage and possibly the installation of 'disposal bins' in the newly designated areas. There will be some financial implications associated with informing dog owners, park users and the public in general about the new dog bylaws in the City.
<p>Extent to which community outcomes are achieved: This policy option aligns with the following Community Outcomes: A Safe City – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated. A City of People who Value and Protect the Natural Environment – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations.</p> <p>Impact on Council's capacity and responsibilities: Potential increase in impact on Council's capacity and responsibilities as new areas are introduced and signage, education and enforcement is needed for these areas.</p> <p>Effects on Maori: No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.</p> <p>Consistency with existing Council policies: Consistent with current Policies. This option supports the directions in the draft Biodiversity Strategy.</p> <p>Views and preferences of persons affected or likely to have an interest: Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting. Potential unrest from dog owners who will view this as "further limiting" their recreation and access.</p> <p>Other relevant matters:</p>		

1 Cont'd

The 'Restrained' Option

64. The 'Restrained' option is based on the requirement that all dogs in public places must be restrained on a leash. Exceptions to this requirement will be areas identified and listed specifically as prohibited or not specified areas. This option would also incorporate the amalgamation of the two current policies and bylaws (Christchurch City Council and Banks Peninsula District Council). Further variations of this option could incorporate the requirement to restrain dogs within a certain class of place eg. urban parks.

	Benefits (current and future)	Costs (current and future)
Social	Gives dog owners and other citizens clarity around where and when dogs can access areas. Greater protection and safety to the public in public places.	Possible increase in the number of complaints owing to the higher number of dog areas designated as restrained. People may feel more inhibited in taking dogs to public places if they have to be on a lead all the time. Dogs and people potentially will get less exercise if they cannot run free at times. There is the loss of opportunity to run dogs free to the detriment of both dog and owner – healthy dog - healthy owner. Less diverse activities people can engage in with their dogs eg. ball throwing /retrieving. Increase in financial cost to dog owners who want to run their dogs free as they may have to travel to designated dog exercise areas. Once a new policy and bylaw is in place there will be a need to inform dog owners, park users and the public in general about the new dog bylaws in the city.
Cultural	None specific.	None specific.
Environmental	Greater protection to all areas including those with limited or no significant values.	None specific.
Economic	More cost effective to manage as it creates one policy for the region. Protection of environmental and wildlife areas now will result in some economic savings, rather than having to spend more later to protect these areas, which will be in alignment with the draft Biodiversity Strategy, the changes being required to be processed through the Special Consultation Process.	Potentially higher costs of enforcement due to the increase of restrained areas and expectation of monitoring and enforcement of these areas. Refer to points 17, 18 and 19 of this report for the enforcement management options and financial implications. There may also be costs to the Council associated with the provision of signage and possibly the installation of 'disposal bins' in the newly designated areas. There will be some financial implications associated with informing dog owners, park users and the public in general about the new dog bylaws in the city.

Extent to which community outcomes are achieved:

This policy option aligns with the following Community Outcomes:

A Safe City – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated.

A City of People who Value and Protect the Natural Environment – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations.

Impact on Council's capacity and responsibilities:

Potential increase in impact on Council's capacity and responsibilities as region wide restrained status implemented and signage, education and enforcement is needed within these areas.

Effects on Maori:

No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.

Consistency with existing Council policies:

Consistent with current Policies. This option supports the directions in the draft Biodiversity Strategy.

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

Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting.

Potential unrest from dog owners who will view this as "further limiting" their recreation and access.

Other relevant matters:

1 Cont'd

The 'Consolidation' Option

65. The 'Consolidation' option is based on the need to amend the current Christchurch City Council Policy and Bylaw to incorporate provisions from the previous Banks Peninsula District Council Bylaw, align the provisions for each area as appropriate and amend some of the other "dog control" clauses to simplify the bylaw and provide some additional clarity. This option would also include the adoption of consistent access times (based on daylight saving hours) and prohibition of dogs to these areas within these times. No new or re-designated access will be added to the dog control areas at this time. However, a key element of this option is for staff to subsequently review additional areas for enhanced dog control in order to protect wildlife (in line with the draft Biodiversity Strategy); protect children for dog attacks and generally improve health and safety. Any proposals for changes to designations would then be presented back to Council at a later date.

	Benefits (current and future)	Costs (current and future)
Social	Gives dog owners and other citizens clarity around where and when dogs can access areas and what some of the competing interests are in relation to areas.	The application of some dog control measures to Banks Peninsula (that are not in the current Banks Peninsula policy) may be of concern to some dog owners.
Cultural	None specific.	None specific.
Environmental	Continued protection of areas that have previously been identified as significant due to their wildlife or habitat.	Continued limited access to some areas for owners with their dogs, which may be seen as negative by dog owners. Additional environmental areas that have been identified as benefiting from protection will not be protected.
Economic	More cost effective to manage as it creates one policy for the region.	Currently there are costs to the Council associated with the provision of signage and possibly 'dog bins' in the designated areas, however this is a current and ongoing business cost. No other changes in costs envisaged since the amalgamation of the two Councils.

Extent to which community outcomes are achieved:

This policy option aligns with the following Community Outcomes:

A Safe City – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated.

A City of People who Value and Protect the Natural Environment – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations. This option will not protect the natural environment as well as the preferred option will.

Impact on Council's capacity and responsibilities:

Similar impact as to current capacity.

Effects on Maori:

No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.

Consistency with existing Council policies:

Generally consistent with current Policies. There is some degree of alignment with the draft Biodiversity Strategy. This strategy indicates that some additional areas should at least be considered for greater dog protection and this option provides for this to take place subsequent to this policy review.

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

Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting; however this group may be unhappy that many other 'environmentally sensitive' areas have not been included.

Other relevant matters:

1 Cont'd

'Do Nothing – Minimal Change'

66. The 'Do Nothing – Minimal Change' option would mean the retention of two current bylaws, the Christchurch City Council Bylaw which covers the pre-amalgamation CCC district and the Banks Peninsula District Council Bylaw which covers the BPDC area pre-amalgamation. However within this option as a minimum the CCC Policy and Bylaw must be reviewed by June 2008 as prescribed by the Local Government Act. Aside from administering two policies and bylaws, there are also other anomalies between the two Dog Control bylaws and policies which has the potential to create confusion for the public accessing dog control areas (e.g. different access times for beaches in Banks Peninsula area than in the Christchurch area) and may hinder the effective and efficient management of dog control issues by the Animal Control Officers. For these reasons it is not considered this option should be adopted.

	Benefits (current and future)	Costs (current and future)
Social	Some dog owners in Banks Peninsula may be happy that no further restrictions have come into place which further limits their recreation.	Frustration in dealing with two different policies within the same jurisdiction – for both the public and for the Animal Control Officers. Confusion for the public with two policies and bylaws operative and one of these related to the former CCC district being reviewed.
Cultural	None specific.	None specific.
Environmental	Existing levels of protection to wildlife will remain in Banks Peninsula and could be either enhanced or reduced in Christchurch depending on the content of the revised Christchurch policy.	Some important environmentally sensitive or wildlife areas will not be protected in Banks Peninsula. Health, hygiene and safety in some bathing areas and public places may not be protected.
Economic	New signage or bins required to be installed only in former CCC district.	More challenging management regimes for the Inspection and Enforcement team managing two separate policies.
<p>Extent to which community outcomes are achieved: This policy option aligns with the following Community Outcomes: A Safe City – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated. A City of People who Value and Protect the Natural Environment – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations. This option will not protect the natural environment as well as the preferred option will.</p> <p>Impact on the Council's capacity and responsibilities: Running separate policies and bylaws will have some increase in capacity impact on current Council services. No change from current responsibilities since the amalgamation of the two Councils.</p> <p>Effects on Maori: No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.</p> <p>Consistency with existing Council policies: Would be inconsistent with Council direction to protect and enhance environmentally sensitive, wildlife areas. Would also not align with Council direction of health, safety and hygiene standards in public places.</p> <p>Views and preferences of persons affected or likely to have an interest: Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting. Potential unrest from dog owners who will view this as "further limiting" their recreation and access.</p> <p>Other relevant matters:</p>		

1 Cont'd

At least one other option (or an explanation of why another option has not been considered)

67. The fifth option would be to update both the current polices and bylaws and maintain two separate regional documents but under the one jurisdiction i.e. a Policy and Bylaw relating to specified boundaries in the Banks Peninsula region and a Policy and Bylaw relating to the Christchurch City district. Although this would create the least change for the respective communities it would be cumbersome and inefficient to manage; it could also generate potentially conflicting implementation of Christchurch City Council Policy e.g. management and protection of wildlife areas if updated policies and bylaws were based on their current clauses within Banks Peninsula.

	Benefits (current and future)	Costs (current and future)
Social	Gives dog owners and other citizens clarity around where and when dogs can access areas and what some of the competing interests are in relation to areas.	Confusion over which policy is relevant where and which policy clause is being updated with what. Difficult for Animal Control to manage and implement. Possible increase in the number of complaints owing to the higher number of dog areas designated as prohibited.
Cultural	None specific	None specific
Environmental	Updated policies would better align with the current CCC strategic direction and community outcomes.	None specific
Economic	Less cost effective to manage dual policies within the region, than to manage one consistent policy.	No change in costs envisaged since the amalgamation of the two Councils.
<p>Extent to which community outcomes are achieved: This policy option aligns with the following Community Outcomes: A Safe City – we live free from crime, violence, abuse and injury. We are safe at home and in the community. Risks from hazards are managed and mitigated. A City of People who Value and Protect the Natural Environment – Our lifestyles reflect our commitment to guardianship of the natural environment in and around Christchurch. We actively work to protect, enhance and restore our environment for future generations.</p> <p>Impact on the Council's capacity and responsibilities: Running separate policies and bylaws will have some increase in capacity impact on current Council services. No change from current responsibilities since the amalgamation of the two Councils.</p> <p>Effects on Maori: No specific effects noted. Consultation with Mahaanui Kurataiao (MKT) and other representative groups, will be undertaken as part of the Special Consultative Process.</p> <p>Consistency with existing Council policies: Consistent with current policies would depend on the content of each Dog Control Policy.</p> <p>Views and preferences of persons affected or likely to have an interest: Support from people who see a potential conflict with dogs in areas where health, safety and hygiene must be maintained, or where environmental issues need protecting. Potential unrest from dog owners who will view this as "further limiting" their recreation and access.</p> <p>Other relevant matters:</p>		

2. PROPOSED CHRISTCHURCH CITY PUBLIC PLACES BYLAW 2008

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Programme Manager Strong Communities
Authors:	Teena Caygill, Policy Analyst - Bylaws Terence Moody, Principal Adviser - Environmental Health

PURPOSE OF REPORT

1. To outline the background and options relating to the review of the public places bylaws and to recommend, on behalf of the Planning and Regulatory Committee, that Council adopt the draft public places bylaw (separately circulated) for consultation.

EXECUTIVE SUMMARY

2. This report is the second report to Council on the review of the public places bylaws. Two reports on this matter have also been considered by the Planning and Regulatory Committee.
3. The three bylaws covered by this review are:
 - the CCC Public Places and Signs Bylaw 2003;
 - the Banks Peninsula District Council (BPDC) Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the Banks Peninsula District Council (BPDC) Public Places and Signs Bylaw 2004 (part three only).
4. It is timely to review these bylaws as the Local Government Act 2002 requires them to be reviewed³, and a review provides the opportunity to combine the bylaws from the Christchurch City Council and the former Banks Peninsula District Council into a single, updated bylaw covering the whole of the new jurisdiction.
5. The Local Government Act requires many of our bylaws to be reviewed in order to determine that they are still necessary, that they are appropriate and that they meet the purpose they were designed for. Existing bylaw clauses were assessed to see whether:
 - the issues they were designed to address still exist
 - the issues are significant, either by frequency or seriousness
 - the issues need to be controlled by regulatory means or can be dealt with by other means
 - the issues are covered by new or amended legislation, by city and district plans, or by other bylaws
 - the clauses are reasonably able to be enforced
 - the Council has the power to make the bylaw under the 2002 Act, and
 - the clauses are consistent with the New Zealand Bill of Rights Act.⁴
6. A clause by clause analysis of the bylaws is separately circulated (Attachment 1), indicating which of the existing clauses in the three bylaws meet the above tests for inclusion in a new public places bylaw.
7. The bylaws currently comprise a collection of relatively diverse matters that may occur in public places, including: the use of public places; hawkers and keepers of mobile or travelling shops; itinerant traders; stands and stalls; signs visible from public places; nuisance in public places; damage to public places; use of barbed wire; discharge of stormwater or wastes; stormwater drains through footpaths; vehicle crossings; access on hillside sites; and miscellaneous provisions. Only those matters that met the tests (above) for inclusion in the new bylaw have been carried over into the draft new bylaw.

³ Section 158 of the Local Government Act 2002 requires bylaws made under the Local Government Act 1974, in force at 1 July 2003, to be reviewed within five years.

⁴ The New Zealand Bill of Rights Act must be taken into account in the making of bylaws - bylaws cannot be made that are inconsistent with the NZBORA (Local Government Act 2002, section 155(3))

2 Cont'd

8. The draft bylaw (Attachment 2 - separately circulated) covers the following matters:
- the regulation of **commercial activities** in public places.
 - the regulation of **obstructions** in public places.
 - allowing the Council to declare **Special Use Areas** by resolution (this could allow or prevent activities in certain areas)
 - regulating to prevent people from **temporarily residing** or sleeping in public places, unless it is specifically allowed in a particular area
 - regulating to prevent **barbed, razor or electrified wire** from within certain distances of public places.
9. If the Council adopts the draft bylaw, it will go out for public consultation in accordance with the Special Consultative Procedure outlined in sections 83 and 86 of the Local Government Act 2002.
10. The bylaw will be made under the following bylaw-making powers in the Local Government Act: preventing nuisance, maintaining public health and safety, and regulating trade in public places.⁵ The purpose of the bylaw is to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used.
11. The Council has at its disposal a number of different tools for managing potential issues in public places, including through City or District Plans, through policies and strategies, through public education, through partnerships with other agencies, through imposing conditions as the owner of public places (eg through contracts), and through bylaws. Bylaws are one tool for managing issues, and as a legal tool, they are effective for regulating some things, but not others.
12. Bylaws are an effective tool for regulating matters such as commercial activities (eg via issuing permits, subject to conditions), but are an ineffective tool for regulating nuisance behaviour, such as graffiti or skateboarding. This is, in part, because the powers contained within the Local Government Act to enforce bylaws are limited, and the only tool available to enforce nuisance behaviour through a public places bylaw is prosecution.⁶
13. Nuisance behaviour is often committed with little physical evidence to link the offender to the crime and where the cost of taking a prosecution is disproportionate to the offence. In some cases, those who commit nuisance behaviour may be considered youths under the law, and any prosecution would have to be undertaken in the Youth Court.⁷ Additionally, the behavioural matters covered in the current bylaws duplicate what is already covered by other legislation, such as the Summary Offences Act. The Council can take a prosecution under the Summary Offence Act, or can help to provide evidence for the Police to take such a prosecution; a bylaw is not necessary.⁸ A further point in relation to prosecutions, is that the process used to make the bylaw and the bylaw itself can be challenged in the Courts, for example, a bylaw may be challenged on the basis of its "reasonableness".⁹ There are no such challenges available under the Summary Offences Act.

⁵ Local Government Act 2002 – Powers of territorial authorities to make bylaws - Section 145(a) to protect the public from nuisance; Section 145(b) protecting, promoting and maintaining public health and safety; and Section 146(a)(vi) [regulating] trading in public places.

⁶ The Local Government Act does not allow for the issuing of infringement notices (instant fines). Parliament has not introduced any infringement offences in relation to these matters.

⁷ Under the Children, Young People and their Families Act 1989, young people are those over 14 years of age, but under 17 years. The Youth Justice section in the Act has specific responsibilities for officers charging a youth with an offence (section 215). Such charges would be brought before a Youth Court (section 272), and a Youth justice Coordinator is required (section 245).

⁸ The penalty for wilful damage under the Summary Offences Act is \$2000, and the penalty for graffiti is \$200. However, if someone has committed multiple offences, the cumulative penalty could be much higher.

⁹ Under the Bylaws Act 1910, bylaws can be challenged on their "reasonableness".

2 Cont'd

14. The Local Government Act requires the Council to determine whether a bylaw is an appropriate tool for addressing each issue. In the case of nuisance behaviour, the clause by clause analysis (Attachment 1) demonstrates that bylaws are not an appropriate or effective tool. Behavioural matters are covered in the Summary Offences Act, which is enforced by the Police. The Police, unlike Council staff, have the power of arrest and maintain a 24 hour response capability. Advice from the Legal Services Unit and the Inspections and Enforcement Unit suggests that behavioural clauses are not effectively controlled by bylaws, as the only tool available is prosecution.
15. Including clauses that cannot easily be enforced within the bylaw may lessen the credibility of other clauses in the bylaw, may falsely raise public expectations that the Council can take action, and may divert the focus away from practical solutions to address such issues.

FINANCIAL IMPLICATIONS

16. It is not anticipated that the adoption of the bylaw, as proposed, would significantly impact on enforcement demands, and indeed may be more cost effective, as the bylaw reduces the scope of the Council's enforcement activities. Provision could be made to recover the costs of providing permits in relation to the use of public places (for example, commercial activities using public space), should the Council so wish.¹⁰
17. Adding to the range of matters covered by the bylaw could substantially increase the budget required for enforcement activities (monitoring, investigation, evidence collection, taking prosecutions, etc), as well as putting a strain on the small Inspections and Enforcement Unit. The Unit has a range of statutory inspection and enforcement responsibilities under a range of Acts.¹¹

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

18. The budgets for the Regulatory Services group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.¹²

LEGAL CONSIDERATIONS

19. The following bylaws have been considered as part of this review:
 - the Christchurch City Council Public Places and Signs Bylaw 2003;
 - the Banks Peninsula District Council (BPDC) Mobile or Travelling Shops and Hawkers and Itinerant Traders Bylaw 1996; and
 - the BPDC Public Places and Signs Bylaw 2004 (part 3 only).
20. The Local Government Act 2002 requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008.¹³ The first two of the bylaws fit into this category. However, the third, the BPDC Public Places and Signs Bylaw, was made under the Local Government Act 2002 and does not need to be reviewed until 2009.¹⁴ However, due to the amalgamation of the BPDC with the CCC, and the need to align the legislation across the new jurisdiction, it is appropriate to review relevant parts of the BPDC Public Places and Signs Bylaw now, in conjunction with the review of the other public places bylaws. To this end, part 3 only of the bylaw is included in this review.

¹⁰ The setting of any charges in relation to permits would go through the usual LTCCP process.

¹¹ For example, the small team of eleven managed over 3,500 complaints last year across a range of legislation.

¹² Our Community Plan 2006-2016, Volume 1, page 149.

¹³ Section 158 of the Local Government Act 2002 requires bylaws made under the Local Government Act 1974, in force at 1 July 2003, to be reviewed within five years.

¹⁴ As it was made under the Local Government Act 2002, rather than the Local Government Act 1974.

2 Cont'd

21. The Local Government Act 2002 allows local authorities to make bylaws to cover certain things or situations. Section 145 of the Act covers general bylaw-making powers. These allow local authorities to make bylaws for the purposes of protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and minimising the potential for offensive behaviour in public places. Section 146 of the Act contains specific bylaw-making powers. Of relevance to this report, is section 146(a)(vi), which allows local authorities to make bylaws for the purpose of regulating trade in public places.¹⁵
22. The proposed new public places bylaw covers aspects of all of these, except minimising offensive behaviour. Offensive behaviour is covered by the Summary Offences Act. For example, the Act covers: offences against public order; offences against persons or property (such as graffiti); intimidation, obstruction and hindering police; indecency; loitering and trespass; and offences relating to nuisances.
23. The Local Government Act requires local authorities to determine whether a bylaw is the most appropriate way of addressing the perceived problems (section 155(1) of the Act). This was canvassed in the previous report to Councillors on this issue in November 2007. In that report, it was decided that a bylaw was the most appropriate way of addressing some potential problems relating to public places.
24. Section 155(2) and 155(3) of the Act relate to whether the proposed bylaw is in an appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act. A bylaw cannot be made if it is inconsistent with the Bill of Rights Act. The Bill of Rights Act sets the minimum standards to which public decision making must conform.¹⁶ Relevant parts of the Bill of Rights in relation to the public places bylaw include the right to freedom of expression, freedom of peaceful assembly, freedom of association, freedom of movement and freedom from discrimination.¹⁷
25. The Legal Services Unit considers that the form of the bylaw, as proposed, is the most appropriate form, and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
26. This report also covers matters relating to section 77 of the Local Government Act, which relates to decision-making and requires local authorities to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the council's capacity. The options analysis forms the second part of this report.
27. The process in the Local Government Act 2002 for making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Act. If the Council agrees to adopt the draft bylaw, it is required to appoint a hearings panel, to agree to a submission closing date, and to agree to the draft Statement of Proposal and Summary of Information for consultation.
28. Section 81 of the Local Government Act requires local authorities to establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes. Initial discussions have taken place with the Ngai Tahu runanga through Mahaanui Kurataiao (MKT). However, due to the timeframes involved, the number of bylaw reviews for MKT to consider, MKT's early stages of development, and its priorities, effective consultation has not yet taken place. MKT will have the opportunity to express its views on the bylaw review during the Special Consultative Procedure.

¹⁵ Section 146(a)(vi), trading in public places.

¹⁶ Ministry of Justice, *The Guidelines on the New Zealand Bill of Rights Act 1990: A Guide to the Rights and Freedoms in the Bill of Rights Act for the Public Sector*

¹⁷ Sections, 14, 16, 17, 18 and 19 of the New Zealand Bill of Rights Act 1990.

2 Cont'd

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

29. Yes, as above.
30. A clause by clause analysis of the existing bylaws was provided to Councillors on 13 December 2007, and an updated version is separately circulated with this report (Attachment 1).
31. The clause by clause analysis compares the current clauses across the three bylaws, and contains advice on whether a clause should be included in the new draft bylaw.¹⁸ The clauses were assessed to see whether:
- the issues they were designed to address still exist
 - the issues are significant, either by frequency or seriousness
 - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
 - the issues are covered by new or amended legislation
 - the clauses are reasonably able to be enforced, and
 - the clauses are consistent with the Bill of Rights Act.
32. Any regulation, including bylaws, should be mindful of the Ministry of Economic Development's Code of Good Regulatory Practice, which suggests that the following should be considered:
- *efficiency* by adopting only regulation for which the costs to society are justified by the benefits, regulation at the lowest cost, taking into account alternatives
 - *effectiveness* to ensure regulation can be complied with and enforced, at the lowest possible cost
 - *transparency* by defining the nature and extent of the problem and evaluating the need for action
 - *clarity* by making things as simple as possible, using plain language where possible, and keeping discretion to a minimum
 - *fairness and equity* any obligations or standards should be imposed impartially and consistently.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

33. The LTCCP's strong communities strategic directions section lists as priorities:
- providing accessible and welcoming public buildings, spaces and facilities;
 - providing parks, public buildings, and other facilities that are accessible, safe, welcoming and enjoyable to use;
 - working with partners to reduce crime, help people avoid injury and help people feel safer; providing and supporting a range of arts, festivals and events; and
 - protecting and promoting the heritage character and history of the city.¹⁹
34. The LTCCP's healthy environment strategic directions section lists as priorities::
- providing a variety of safe, accessible and welcoming local parks, open spaces and waterways;
 - providing street landscapes and open spaces that enhance the character of the city; and
 - protecting and enhancing significant areas of open spaces within the metropolitan area.²⁰
35. The LTCCP's liveable city strategic directions section lists as priorities::
- improving the way in which public and private spaces work together.²¹

¹⁸ The Council Decision-making Guide, as well as the Local Government New Zealand guide on regulation and enforcement, require taking into account: the identification of the problems being addressed; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

¹⁹ Our Community Plan 2006-2016, Volume 1, p.60

²⁰ Our Community Plan 2006-2016, Volume 1, p.61

²¹ Our Community Plan 2006-2016, Volume 1, p.64

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

36. The bylaw would be consistent with the commitment in the Community Plan, volume 1, page 145: *Legislative requirements are enforced to ensure the safety and health of people.*

ALIGNMENT WITH STRATEGIES

37. The proposed new bylaw will manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used. A number of Council strategies are particularly relevant when considering the use of public places, including the Central City Revitalisation Strategy, the Safer Christchurch Strategy, the Pedestrian Strategy, the Cycling Strategy, the Litter Strategy and the Equity and Access for People with Disabilities Policy.
38. The *Christchurch Central City Revitalisation Strategy* aims to develop a “vibrant, fun, exciting, safe and sustainable heart of Christchurch...”.²² Two of the priorities of the Strategy are “enhancing our public spaces” and “growing our businesses”. The Strategy also aims to “enhance pedestrian, cyclist, and public transport accessibility and safety in and around the Central City...”²³ and the number of pedestrians in the Central City is listed as a measurable sign of achievement in a number of the objectives.²⁴
39. The *Safer Christchurch Strategy* aims to see rates of injury and crime decline, for people to feel safe at all times in Christchurch City, and for Christchurch to have excellent safety networks, support people and services.²⁵ One of the ways of measuring the success of the Strategy is that “pedestrians, cyclists, motorists and people with disabilities can move safely around our city”.²⁶
40. The *Pedestrian Strategy for Christchurch, February 2001*, states: “The Christchurch City Council is committed to the support of pedestrians and the encouragement of walking as a method of travel and for social recreation... Council will work to create a City in which: the pedestrian environment is friendly, safe and accessible; more people walk, more often; all pedestrians are able to move about freely and with confidence”.²⁷ Additionally, Council recently signed the International Charter for Walking, which supports the “universal rights of people to be able to walk safely and to enjoy high quality public spaces, anywhere and at any time.”²⁸
41. The *Christchurch Cycling Strategy* states: “The City has a long-term approach to making cycling safe, enjoyable and [to] increase the number of people who cycle (for transport and recreation). The Cycling strategy is a confirmation by Council of its full commitment to cycling and aim to more actively promote cycling as part of Christchurch’s sustainable transport mix”.²⁹
42. The *Litter Strategy* focuses on “the Council’s role in creating an environment that encourages residents, workers and visitors to demonstrate pride in the city by taking personal responsibility for not littering streets, parks and public places”. The goal of the Strategy is “Christchurch is New Zealand’s cleanest city, with citizens who are responsible for their own litter and do not tolerate others littering.”³⁰

²² <http://www.ccc.govt.nz/CentralCity/>

²³ Central City Strategy, Revitalising the Heart of Our City - Stage I, Objective F, p. 13,

http://www.ccc.govt.nz/CentralCity/Strategy/DevelopmentOfCentralCityStrategyStageOne_Feb2001.pdf

²⁴ Central City Strategy, stage II, , pp 48-51, <http://www.ccc.govt.nz/CentralCity/CCRPStage2.pdf>

²⁵ <http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/>

²⁶ Safer Christchurch Strategy, <http://www.ccc.govt.nz/publications/SaferChristchurchStrategy/>

²⁷ <http://www.ccc.govt.nz/Publications/PedestrianStrategy>

²⁸ Signed 3 October 2007 by the then Mayor, Garry Moore – The International Charter for Walking - Walk 21 – Taking walking forward in the 21st Century

²⁹ <http://www.ccc.govt.nz/cycling/future/>

³⁰ Litter Strategy, 24 June 2005, [ccc.govt.nz/council/proceedings/2005/june/cnclcover30th/litterstrategy.pdf](http://www.ccc.govt.nz/council/proceedings/2005/june/cnclcover30th/litterstrategy.pdf)

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43. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which "Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau".³¹ Goal 4.5 states that the Council will endeavour to "enforce regulations relating to footpaths and streets to allow people with disabilities to move about unobstructed (this includes... sandwich boards on footpaths)".³²
44. These six strategies touch on aspects of what a proposed public places bylaw would be developed to manage – that is, a balance between the different activities the community may wish to use public places for. The proposed bylaw would provide for reasonable controls to protect health and safety, to protect the public from nuisance, and to regulate trade in public places.
45. The Council also has a number of operational policies that are relevant to public places, in particular, the commercial use of public spaces, as follows:
- Public Streets Enclosures Policy and Fees Charged (adopted 31 August 2006)
 - Stall Site Licensing Policy (adopted 20 September 1995)
 - Airspace over Public Roads - Granting Rights (adopted 22 July 1999)
 - Busking Conditions (adopted 27 August 1997)
 - Stalls in Cathedral Square and City Mall, (adopted 23 September and revised 16 December 1991)
 - Signboards in Public Places (adopted 22 July 1998)
 - Structures on Streets (Ramp, Retaining Walls, Garage, Parking Platform Etc), (adopted 25 March 1998)
 - Footpath Extensions to Expand Cafes onto the Roadway (adopted 25 March 1998)
 - Victoria Square and Victoria Square Amphitheatre - Use Of (26 November 1990)
 - Street Trading Policy (16 December 1999)
 - Banks Peninsula District Council Stalls/Market Policy (adopted November 1992).
46. The proposed bylaw would be complemented by operational policies (such as those above), which would align with the relevant strategies for managing public spaces. These policies will need to be reviewed and updated to ensure they align with the new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for. Operational policies will outline things such as guidance information, application procedures, administrative arrangements, terms and conditions, and definitions.

Do the recommendations align with the Council's strategies?

47. Yes, as above

CONSULTATION FULFILMENT

48. A Council seminar was held in May 2007. The Bylaw Review Sub-Committee considered the public places bylaw review in August 2007, enabling the inclusion of Community Board members' views. The Planning and Regulatory Committee considered the public places bylaw review on 29 January and again on 7 February 2008. A joint Council and Community Board seminar was held on 13 February to give a summary of the bylaws being reviewed, including public places.
49. Initial discussions have taken place with the Ngai Tahu runanga Mahaanui Kurataiao (MKT).
50. Informal discussions on the current and future coverage of the public places bylaws were undertaken with the New Zealand Police and with the Central City Business Association.

³¹ Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

³² Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

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51. If the draft bylaw is adopted by the Council, stakeholder groups will be given the opportunity to make a submission as part of the Special Consultative Procedure. They can also be heard before the hearings panel, if they so wish. Stakeholder groups include, but are not limited to, retailers, event management companies/festival organisers, disability associations, the Chamber of Commerce, and all residents' groups. The Ngai Tahu runanga will have a further opportunity to express their views on the proposed bylaw through this Special Consultative Procedure process.
52. On 29 February, the Planning and Regulatory Committee considered a list of stakeholders common to all the bylaw reviews. In addition to this, a separate list of stakeholders that may be interested in the draft public places bylaw has been prepared. These two lists are separately circulated with this report (Attachment 5).

STAFF RECOMMENDATIONS

It is recommended that:

- (a) A Hearings Panel be appointed, the members thereof to be named.
- (b) The Statement of Proposal and Summary of Information (separately circulated) be adopted, and that they be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website.
- (c) Public notice of the consultation be given in The Press and Christchurch Star newspapers and on the Council's website on 12 March 2008, and that public notice of the proposal be given in the Akaroa Mail and other community newspapers distributed in the Christchurch area, as close as possible to 12 March 2008.
- (d) The period within which written submissions may be made to the Council be between 12 March 2008 and 16 April 2008.

COMMITTEE RECOMMENDATIONS

The Committee recommends to the Council that:

- (a) The draft bylaw (separately circulated) is the most appropriate way to address problems in public places; is in the most appropriate form; and does not give rise to any implications under the New Zealand Bill of Rights Act 1990 [sections 155(1), 155(2) and 155(3) of the Local Government Act 2002].
- (b) The draft bylaw will be made to protect the public from nuisance in public places; to maintain health and safety in public places; and to regulate trade in public places [sections 145(a), 145(b) and 146(a)(vi) of the Local Government Act 2002].
- (c) The operational policies relating to the public places bylaw (listed in a register in the Explanatory Note of the bylaw) are reviewed, by the end of 2008.
- (d) The draft bylaw (separately circulated) be adopted for consultation.
- (e) Behavioural matters not addressed through the bylaw be dealt with by a working party.

(Note: Councillor Broughton recorded her vote against clause (a) of the recommendations.)

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BACKGROUND (THE ISSUES)

53. In general, it is accepted that Council control of public places via a bylaw should not:
- apply to matters that are covered adequately by other legislation
 - deal with matters that unnecessarily restrict individual freedoms³³
 - cover matters that are insignificant in effect or magnitude
 - deal with matters that can be more appropriately dealt with by other tools at the Council's disposal
 - be impractical to enforce.³⁴

PREVIOUS RECOMMENDATIONS

54. At the 13 December 2007 Council meeting, Councillors agreed that a draft bylaw should be prepared covering:
- commercial activities in public places
 - obstructions in public places
 - Council declaring public places Special Use Areas
 - temporarily residing in public places
 - some aspects of building and construction near or over public places.
 - other issues that may arise during further analysis.
55. Councillors added the following list of matters to be covered in the draft bylaw:
- playing of games
 - poster pasting/graffiti/tagging/etching
 - damage to public places
 - depositing rubbish or litter
 - substance abuse.
56. Councillors also asked that staff to report back on the possibility of the present ban on the possession or consumption of liquor in certain public being extended to the whole of the city.

Building and construction near or over public places

57. The 13 December 2007 report to the Council suggested that clauses covering some aspects of building and construction near or over public places may be necessary. Further analysis has revealed that such clauses (vehicle crossings and access on hillside sites) may need to be included in a bylaw, but that they are more appropriately covered under a traffic and parking bylaw, rather than a public places bylaw. These clauses will be incorporated into the draft new traffic and parking bylaw, rather than the public places bylaw.³⁵

Matters to be covered by the draft bylaw – nuisance behaviour

58. Councillors requested that a range of behavioural matters be included in the new bylaw; however, advice suggests that a bylaw is not an appropriate tool for regulating nuisance behaviour, as indicated throughout this report.

³³ The New Zealand Bill of Rights Act must be taken into account in the making of bylaws - bylaws cannot be made that are inconsistent with the NZBORA (Local Government Act 2002, section 155(3))

³⁴ The Decision Making Guide (produced by CCC and Local Government New Zealand) requires taking into account the nature of the identified problems; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

³⁵ The clause on restricting the use of barbed wire (as well as razor and electrified wire) from within certain distances of public places is still to be included in the proposed new bylaw. Just the clauses on vehicle crossings and access on hillside sites no longer need to be included in this bylaw.

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City-wide alcohol ban in public places

59. Councillors asked staff to report back on extending the liquor ban across the whole of the City. The liquor ban is created through liquor control bylaws. The City Council and Banks Peninsula District Council Liquor Control Bylaws will be reviewed later in 2008, in conjunction with the Council's Alcohol Policy. These bylaws are not statutorily required to be reviewed until 2009, but will be reviewed in late 2008, once the current bylaw reviews are complete.

BYLAW CONTENT SUMMARY

60. The draft bylaw (Attachment 2 - separately circulated) covers the following matters:
- the regulation of **commercial activities** in public places.
 - the regulation of **obstructions** in public places.
 - allowing the Council to declare **Special Use Areas** by resolution (this could allow or prevent activities in certain areas)
 - regulating to prevent people from **temporarily residing** or sleeping in public places, unless it is specifically allowed in a particular area
 - regulating to prevent **barbed, razor or electrified wire** from within certain distances of public places.
61. The review of the existing bylaws has resulted in a rationalisation of the number of clauses in the bylaw that cover similar matters. As the clauses in the bylaw are now more general, specific information will be contained within operation policies. Operational policies are guidance documents that will outline things such as application procedures, administrative arrangements, terms and conditions, and definitions. The policies will be adopted by the Council by resolution, and the list of operational policies will be contained in a register in the Explanatory Note to the bylaw. This will be updated as the policies are updated. The operational policies will all be available on the Council's website and will be in the same part of the website as the bylaw.
62. There are a range of operational policies that currently relate to matters covered by the public places bylaws. These will need to be reviewed and updated to ensure that they align with the new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for.
63. The draft bylaw does not cover nuisance/behavioural issues, as the bylaw's purpose is to regulate *lawful* activities, and nuisance behaviour is already illegal, as it is covered by other legislation, including the Summary Offences Act. See below for more comment.

THE OBJECTIVE

64. The objective of the bylaw is to provide for reasonable controls for the protection of health and safety, the avoidance of nuisance in public places, and to regulate trade in public places, to the extent that the controls fulfil the provisions of the Local Government 2002 and appropriate community outcomes. The purpose of the draft bylaw will be to manage public places in such a way as to balance the various different, and sometimes competing, lawful uses for which public places may be used.³⁶

Nuisance/behavioural clauses not included in the bylaw

65. The proposal to incorporate behavioural nuisance clauses (such as those addressing graffiti, skateboarding, littering, etc) into the bylaw does not meet the test in the Local Government Act, which requires local authorities to determine whether a bylaw is the most appropriate way of addressing perceived problems (section 155(1) of the Act). By not including these matters in the bylaw, the Council would not be saying that these are things are not problems, just that the bylaw is not the most appropriate way to address them.

³⁶ The bylaw will regulate lawful matters – unlawful matters are already illegal due to their coverage under other legislation.

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66. A bylaw is not an appropriate (or effective) way of addressing the problem of nuisance behaviour as:
- the only option for enforcing the bylaw is to take a prosecution in the District Court (or the Youth Court, if the offender is a youth 14-17 yrs)
 - there is no power under the Local Government Act to issue infringement notices (instant fines)³⁷ or to use other, less formal, legal tools than prosecution
 - having these clauses in the bylaw duplicates what is in the Summary Offences Act (which is enforced by the Police)
 - the public places bylaw is intended to regulate otherwise lawful activity, the behavioural matters are already unlawful (under the Summary Offences Act or the Litter Act)
 - many of these issues (such as substance abuse) are more appropriately handled by the Police, who have specialised training and other tools at their disposal, have the power to arrest, and have a 24 hour response capability
 - it can be difficult to establish the identity of the offender in nuisance behaviour situations, and Council Enforcement Officers are empowered to ask for a person's name and address, but if the person refuses or gives fake or incorrect details, an Enforcement Officer can take no further action
 - Council staff have no ability to take action to stop the offender from committing the offence, as they have no powers of arrest, and physically intervening could be considered assault or put Council staff in danger
 - often by the time a complaint has been received, the offender has moved on, so the identity of the offender cannot be established
 - the cost of damage caused by nuisance behaviour may be disproportionate to the cost of taking a prosecution.
67. Behavioural nuisance clauses have been in public places bylaws in Christchurch for over two decades and the Council has not taken any related prosecutions. There is no record of any prosecutions being taken by the Banks Peninsula District Council. As the only enforcement tool available under the Local Government Act is prosecution, the clauses are not easily enforceable.

Issue	Existing legislative coverage, effectiveness of a bylaw, other approaches
Playing of games CCC – clause 3 BPDC – clause 3.2.1	<ul style="list-style-type: none"> • As the clauses are currently worded, they prohibit anyone playing any game or skateboarding, in a way that could be considered reckless or dangerous, or which could cause damage or annoyance, in a public place. • This currently covers all parks in Christchurch, where, for example, sports are regularly played, and all skate parks. • Since the development of the Washington Skate Park, complaints to the Council about skateboards have almost completely stopped. • There is no record of complaints about people "playing at games". There is no record of prosecutions being taken by either Council under these clauses. Proving behaviour has been "reckless" or "dangerous" or that it "may cause damage or annoyance" in a Court would be difficult. <p>Coverage under other law</p> <ul style="list-style-type: none"> • These issues are already covered by the Summary Offences Act (section 13 – things endangering safety - imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000). The Council can take a prosecution under the Summary Offences Act. <p>Solutions</p> <ul style="list-style-type: none"> • The clause on special use areas could be used to prohibit an activity from a specific area – such as banning ball games in Cashel Mall to protect the safety of pedestrians. • Skateboards, in-line skates and roller skates are defined as a "vehicle" under the Land Transport Act 1998 and the Police can issue infringement notices (instant fines).

³⁷ Infringement notices (instant fines) cannot be issued under the Local Government Act. Some bylaws allow infringement fines - it depends on the primary act under which the bylaw was made – eg some of our bylaws are made under the Dog Control Act, the Transport Act, etc, which all allow infringement notices to be issued in relation to the enforcement of bylaws.

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Issue	Existing legislative coverage, effectiveness of a bylaw, other approaches
Poster pasting, graffiti, tagging, etching CCC – clause 4 BPDC – clauses 3.3.2 – 3.3.3	<ul style="list-style-type: none"> • There is no record of prosecutions being taken by the Councils. • Establishing the identity of the offender and proving they committed the offence in order to get a prosecution is difficult. <p>Coverage under other law</p> <ul style="list-style-type: none"> • These issues are covered by the Summary Offences Act and are enforced by the Police - section 33 – Billsticking, defacing, etc – a fine not exceeding \$200. Charges could also be brought under section 11 – wilful damage - imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000. The Council can take a prosecution under the Summary Offences Act. <p>Solutions</p> <ul style="list-style-type: none"> • Other non-regulatory approaches to graffiti can be very effective. The Council already undertakes a range of activities, including the Graffiti Hotline, working with communities, the Graffiti Vandalism Removal Volunteer Programme, Project Legit, etc.
Damage to public places BPDC - clause 3.3.2	<p>Coverage under other law</p> <ul style="list-style-type: none"> • Damage to public places is covered by the Summary Offences Act (section 11 – wilful damage - imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000). The Council can take a prosecution under the Summary Offences Act. <p>Solutions</p> <ul style="list-style-type: none"> • Reports of damage are referred to the Police where appropriate.
Depositing rubbish or litter CCC – no coverage BPDC - clause 3.2.1	<ul style="list-style-type: none"> • Having this in the bylaw would duplicate what is covered by the Litter Act (and as the only tool would be prosecution, it would be less useful). <p>Coverage under other law</p> <ul style="list-style-type: none"> • Traffic and Parking Wardens are delegated powers under the Litter Act. This allows them to issue infringement fines (tickets) to those caught littering. This is effective (though narrow in scope). <p>Solutions</p> <ul style="list-style-type: none"> • A non-regulatory option would be to provide more rubbish bins or recycling facilities in public places where there is a demonstrated need.
Substance abuse CCC – no coverage BPDC - clause 3.2.1	<ul style="list-style-type: none"> • No record of the BPDC taking a prosecution. • Enforcement could put Council staff in danger and Council Enforcement Officers are not trained to deal with such matters. • There are more effective ways of managing substance abuse in public places, for example, engaging the Police, who are equipped to handle such issues.

66. The Police are empowered to address the behavioural issues and can do so more effectively, with better resources, training and enforcement tools, than the small Council enforcement team. The Council is working with the Police to help address some of these issues, for example, through the Graffiti Hotline, through Safer Christchurch, and through the Central City Revitalisation project.
67. There is no dispute that these types of behaviours are problematic; the question is whether a bylaw is an effective tool to deal with the problem. In this case, a bylaw is not an effective tool for addressing nuisance behaviour, for the above reasons. The purpose of the bylaw is to regulate “lawful” matters. These sorts of behavioural matters are already illegal under other law, such as the Summary Offences Act. There is nothing to be gained by duplicating coverage in a bylaw.

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68. If behavioural clauses are included within the bylaw to send a message about the appropriateness of behaviour, this may raise public expectations that the Council will enforce the bylaw, unintentionally setting the Council up for failure. Incorporating unenforceable clauses into the bylaw may tie up staff and Councillor time responding to complaints about why the Council is not enforcing its bylaws.

Display of goods / trading in a public place

69. A further issue that was raised at the last Council meeting on this issue, but did not result in a new recommendation, was the issue of street prostitution – that is, people soliciting for sex work in public places.
70. The Prostitution Reform Act 2003 changed very little in regard to legal controls over prostitution. Prostitution is legal, and has been for a considerable number of years. The Act has four main purposes:
- to safeguard the human rights of sex workers and protect them from exploitation
 - to promote the welfare and occupational health and safety of sex workers
 - to protect and promote public health for sex workers and their clients
 - to prohibit persons under 18 years of age being involved in prostitution.
71. The bylaw-making powers under the Local Government Act 2002 that are relevant to the regulation of street prostitution include:
- trading in public places (s.146 (a)(vi))
 - protection from nuisance (s.145 (a))
 - minimising the potential for offensive behaviour (s.145(c)).³⁸
72. Prostitution can be regulated, but it cannot be prohibited. There are Bill of Rights and other implications in how it is regulated, for example, the regulation cannot be so difficult to comply with that it is, in effect, prohibitive. Bylaws in this area have been challenged in Court, including the Christchurch City Brothels (Location and Signage) Bylaw 2004, which was, in part, successfully challenged in 2005.³⁹
73. One possibility is that street prostitution could be regulated as “trading” in a public place. A relevant clause in the existing bylaw gives the Council the power to issue licenses and set conditions for commercial activities in public places (including displaying goods for sale). Council could apply this to street prostitution. However, such a requirement would have to focus on the behaviour concerned and explicitly describe the behaviour being regulated (otherwise it would be unenforceable).⁴⁰ The cost effectiveness of such an approach, including the likely success of enforcement and any prosecutions, is questionable. Licensing of street prostitutes would have to comply with the Prostitution Reform Act requirements, for example, the Act requires all sex workers to adopt safe sex practices.⁴¹ A further issue is that if the Council licenses street prostitutes, such licensing could be seen by the public as an endorsement of the activity.

³⁸ Note that both “nuisance” and “offensive behaviour” have particular meanings under the law. Because a person finds behaviour offensive or a nuisance, this does not necessarily mean that the behaviour would be considered offensive or a nuisance under the law.

³⁹ Willowford Family Trust v Christchurch City Council; 29 July 2005; Justice Panckhurst; High Court, Christchurch.

⁴⁰ The Prostitution Reform Act defines commercial sexual services as “sexual services that—(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

⁴¹ Section 9 of the Prostitution Reform Act 2003, Sex workers and clients must adopt safer sex practices

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74. A further issue with regulating street prostitution via a bylaw, is that street prostitution predominantly occurs in the evening and early morning hours. Council enforcement staff do not work during these hours, and there could be considerable occupational safety issues (as well as large budgetary increases), were such an approach to be taken. As mentioned previously, Council Enforcement Officers have no powers of arrest, and if an offender provides a fake or incorrect name and address, there is no further action that can be taken. However, the power to enforce such a clause could be delegated to the Police, subject to their agreement. A further issue, is that proving someone was operating as a street prostitute could be very difficult in a legal sense.
75. There is little evidence that street prostitution creates a significant problem. Indeed, the Justice and Electoral Select Committee, tasked with considering the Prostitution Law Reform Bill, stated that "The extent of street soliciting in New Zealand is limited, both in the areas where it happens and the numbers of workers involved. Few submitters provided tangible evidence of actual harm caused by such activity".⁴² For example, it was found that the problems occurring in the Manchester Street area (such as loud conversations; litter; using residents' gardens as toilets; and unsafe parking practices) were caused by patrons of the bars and other night activities in Manchester Street, not by street prostitutes.⁴³ These problems can be addressed by the Council through non-regulatory means, such as the provision of rubbish containers in the relevant areas; parking restrictions along the appropriate areas; the provision of public toilets; and increased street cleaning. Additionally, other issues, such as indecent exposure, were it to occur, can be dealt with under existing legislation administered and enforced by the Police.⁴⁴
76. A further report to Council on the prostitution-related matters will be prepared in late 2008, following the report of the Ministry of Justice's Prostitution Law Review Committee. The Committee will focus on whether the Act is achieving its prescribed purpose five years since it came into force. The Committee will provide its findings to the Minister of Justice by June 2008, and a report will be provided to Councillors in late 2008. In addition, the Council will be reviewing the Christchurch City Brothels (Location and Signage) Bylaw 2004 later this year.

THE OPTIONS

77. The options are:
- Option one: Status quo, retain the three bylaws
 - Option two: Revoke the three bylaws and create a consolidated bylaw
 - Option three: Revoke the three bylaws and create a consolidated, rationalised and modernised public places bylaw.
78. Option one, status quo, is not considered acceptable, as two of the three bylaws under consideration must be reviewed by 30 June 2008 under the requirements of section 158 of the Local Government Act 2002. Additionally, due to the amalgamation of the CCC and BPDC, it is sensible to combine this process with a review of the third bylaw, the BPDC public places bylaw, in order to introduce a single bylaw covering public places across the whole jurisdiction.
79. Option two, revoking the three bylaws and creating a consolidated bylaw would meet the review requirements of section 158 of the Local Government Act and address the amalgamation issues, but is not the preferred option, as consolidating the bylaws, but not rationalising and updating them could lead to a bylaw that may need further updating within a short time frame (which would have to undergo the full Special Consultative Procedure). In addition, this option is not likely to meet the tests of section 155 in the Local Government Act.⁴⁵ Part of the purpose of the Local Government Act requirement to review bylaws, is to ensure that they are relevant and appropriate in the current context. As the clause by clause analysis shows, many of the existing clauses:

⁴² Prostitution Reform Bill, As reported from the Justice and Electoral Committee, 29 November 2002, p. 32

⁴³ Report by the Chairman of the Christchurch City Council Prostitution Reform Act Subcommittee, 22 April 2004

⁴⁴ For example, indecent exposure is an offence under the Summary Offences Act (s. 27)

⁴⁵ Section 155(1) requires that a local authority must "determine whether a bylaw is the most appropriate way of addressing the perceived problem".

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- reflect matters that were significant in the past, but are no longer relevant
- are now covered by national legislation, by city and district plans, or by other bylaws
- may not comply with the Code of Good Regulatory Practice
- may not comply with the New Zealand Bill of Rights Act 1990
- may not fall within current bylaw making powers
- may no longer present a significant issue that needs to be controlled via bylaw
- may not be cost-effective or possible to enforce.

80. Option three, revoking the three bylaws and creating a consolidated, rationalised and modernised public places bylaw, is the preferred option. This would meet the review requirements of section 158 of the Local Government Act, address the amalgamation issues and meet the tests, at a broad level, in section 155 of the Local Government Act.⁴⁶ The key differences between this option and option two, are the rationalisation of the new bylaw, and its modernisation. Rationalising the bylaw would clarify and reduce the clauses, for example, by removing duplication and matters that are insignificant or are no longer relevant, and matters that cannot be enforced. Modernising the bylaw would update the language and style of the bylaw, so that it is easier to understand, and is more suitable now and into the future.

THE PREFERRED OPTION

81. Option three, revoking the existing three bylaws and creating a consolidated, rationalised and modernised public places bylaw is preferable.
82. Rationalisation of the bylaw would remove clauses that are already covered by national legislation, by city and district plans, or by other bylaws, and ensure that the bylaw no longer contains matters that are insignificant or no longer relevant in the current context, or that cannot be practically enforced. Additionally, only those matters that are lawful will be regulated by the bylaw.
83. The proposed new bylaw will contain less information than the current bylaws, as it will have a set of operational policies which will sit outside the bylaw itself. The operational policies will contain the detail, including guidance, forms, conditions, etc. This will allow a greater degree of flexibility for managing these approvals. If the information were to be contained within the bylaw itself, rather than in a policy, any changes would have to undergo the full Special Consultative Procedure. Taking this approach to the bylaw results in a streamlined and simplified bylaw, with the much of the detail in operational policies. The policies already exist, but will need to be reviewed to ensure they align with the new bylaw.⁴⁷
84. This type of bylaw is written in simple, modern language. The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: "there is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people...".⁴⁸ Additionally, the Ministry of Economic Development's *Code of Good Regulatory Practice*, promotes the importance of clarity, arguing that regulation should use plain language where possible, in order to make things as simple as possible.⁴⁹

⁴⁶ As above.

⁴⁷ Section 151 of the Local Government Act 2002 and Section 13(1) of the Bylaws Act 1910 make it clear that a bylaw may contain discretion. This allows a bylaw to leave aspects relating to the bylaw either to be decided by Council resolution (such as operational policies), or to be approved by a Council officer acting under delegation (such as approving an application for a permit, following the conditions set down in the operational policies).

⁴⁸ The Legislation Advisory Committee was established in 1986 to "help improve the quality of law-making by attempting to ensure legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation" www.justice.govt.nz/lac/who/index.html

⁴⁹ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

2 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option

85. The preferred option is to revoke the three bylaws and create a single, new, consolidated, rationalised and modernised public places bylaw.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> • Only matters of significance will be regulated • Only matters that are enforceable will be regulated • Flexibility for operational policies to be altered (rather than having to alter the bylaw) • An easier to understand bylaw (modern plain English) • Flexibility to cover future applications (all activities covered, rather than specific activities) • Public expectations more likely to be met (realistic and enforceable clauses) 	<ul style="list-style-type: none"> • Initial need to review policies and keep them updated • People have to check with the Council before undertaking an activity – all activities covered, rather than specific activities (eg “commercial activities” generally are covered, rather than each specific commercial activity being listed) • Increased need for advertising/communications
Cultural	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific
Environmental	<ul style="list-style-type: none"> • None specific 	<ul style="list-style-type: none"> • None specific
Economic	<ul style="list-style-type: none"> • Only matters of significance will be regulated • Flexibility for policies to be altered (rather than having to alter the bylaw) • Requirements more easily understood 	<ul style="list-style-type: none"> • Initial need to review policies and keep them updated • Some Council staff time – eg in preparation of advisory documents (may be similar to the current situation)
<p>Extent to which community outcomes are achieved:</p> <p>The community outcomes that this option would contribute to include:</p> <ul style="list-style-type: none"> • a well governed city by having a single, new, consolidated, rationalised and modernised public places bylaw, the requirements will be easier to understand than they are now. Increased understanding of the bylaw, both while it is being consulted on, and once it comes into force. Public expectations will be able to met in relation to enforcement. <p>Impact on the Council's capacity and responsibilities:</p> <p>Inspection and enforcement activity for the bylaw, as proposed, is likely be less than or similar to that required under current bylaws. Provision could be made to recover the costs of providing permits in relation to public places, should the Council so wish.</p> <p>Effects on Maori:</p> <p>There will be no specific effect on Maori – consolidating, rationalising and modernising the three bylaws will make them easier to understand for everyone.</p>		

2 Cont'd

Consistency with existing Council policies:

Current operational policies relating to the management or access of public places include:

- Public Streets Enclosures Policy and Fees Charged (adopted 31 August 2006)
- Stall Site Licensing Policy (adopted 20 September 1995)
- Airspace over Public Roads - Granting Rights (adopted 22 July 1999)
- Busking Conditions (adopted 27 August 1997)
- Stalls in Cathedral Square and City Mall, (adopted 23 September and revised 16 December 1991)
- Signboards in Public Places (adopted 22 July 1998)
- Structures on Streets (Ramp, Retaining Walls, Garage, Parking Platform Etc), (adopted 25 March 1998)
- Footpath Extensions to Expand Cafes onto the Roadway (adopted 25 March 1998)
- Victoria Square and Victoria Square Amphitheatre - Use Of (adopted 26 November 1990)
- Street Trading Policy (16 December 1999)
- Banks Peninsula District Council Stalls/Market Policy (adopted November 1992).

Additionally, the Council has existing arrangements, for example, a contract with Phantom Billstickers for poster-pasting and bollards, and an agreement relating to advertising on bus shelters with Adshell.

These operational policies will need to be reviewed and updated to ensure they align with the new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for.

Such policies, agreements or contracts would be complementary to the bylaw, and can be updated to respond to changing community needs, whereas if a greater level of detail was contained within the bylaw, the bylaw itself would have to be updated, which must involve the Special Consultative Procedure.

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

The Inspections and Enforcement Unit is strongly in favour of this option, as it only contains clauses that are enforceable.

Further views would be obtained through the Special Consultative Procedure.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

Other relevant matters:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008.

The amalgamation of the Banks Peninsula District Council and the Christchurch City Council requires an amalgamation of the bylaws which cover the whole region under CCC jurisdiction.

2 Cont'd

Maintain the Status Quo (if not preferred option)

86. The status quo is not preferred as it would involve failing to comply with section 158 of the Local Government Act, which requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008. In addition, retaining the three separate bylaws, would fail to acknowledge or respond to the amalgamation of the BPDC with the CCC. A single bylaw is required to cover the whole district for which the Christchurch City Council has responsibility.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> Existing bylaws may be known to some people - no new requirements to publicise 	<ul style="list-style-type: none"> Legal uncertainty as to the status and enforceability of the bylaws Reputation of the Council tarnished by not meeting LGA requirements Reputation of the Council tarnished by failing to update bylaws as a result of the BPDC/CCC amalgamation in a timely fashion Reputation of the Council tarnished by failure to enforce the unenforceable parts of the current bylaws
Cultural	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> None specific
Environmental	<ul style="list-style-type: none"> None specific 	<ul style="list-style-type: none"> None specific
Economic	<ul style="list-style-type: none"> Existing bylaws may be known to some businesses - no new requirements to learn 	<ul style="list-style-type: none"> Legal uncertainty as to the status and enforceability of the bylaws Open to legal challenge
<p>Extent to which community outcomes are achieved:</p> <p>The community outcome of a well governed city would not be met, as the maintaining the current situation would be confusing and uncertain, and would not comply with the Local Government Act.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create a uncertain legal environment, in which the legal status and enforceability of the bylaws would be questionable.</p> <p>Effects on Maori:</p> <p>There will be no specific effect on Maori – maintaining the status quo would have a negative effect on the city as a whole.</p> <p>Consistency with existing Council policies:</p> <p>The Council has operational policies which currently cover a wide range of matters covered by the bylaws (see the preferred option (above) for the list). These policies could continue to be used, but without the bylaw to back them up, their status is uncertain.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>The Legal Services Unit does not support maintaining the status quo, nor does the Inspections and Enforcement Unit.</p>		

2 Cont'd

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

87. The third option is to revoke the three bylaws and create a single, new, consolidated bylaw. This new bylaw would largely replicate the existing three bylaws, with some rationalisation where duplication exists. The clauses and language from the existing three bylaws would largely be carried over to the new bylaw.
88. This is not the preferred option as some of the language in the three bylaws does not follow the movement in New Zealand towards plain English legal drafting.⁵⁰ A further issue, is that there is a need to rationalise the three bylaws, as aspects of them:
- may not fall within current bylaw making powers of the Local Government Act 2002
 - are now covered by other legislation or by city and district plans
 - no longer present a significant issue that needs to be controlled via bylaw
 - may no longer be cost-effective or possible to enforce.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> • not much change – easy to understand 	<ul style="list-style-type: none"> • aspects of the current bylaw cannot be enforced (eg the behavioural nuisance clauses) • public expectations unlikely to be met (unrealistic and unenforceable clauses) • duplication in other laws (including city/district plans) is unnecessary and could be confusing • the need for updating or altering may be more likely in the short term • outmoded language may make the new bylaw harder to understand, now and into the future • some coverage of the bylaw is prescriptive, providing less flexibility • lack of flexibility may increase the need to update or alter the bylaw • if it requires updating or altering, it will have to go through the full Special Consultative Procedure
Cultural	<ul style="list-style-type: none"> • none specific 	<ul style="list-style-type: none"> • none specific
Environmental	<ul style="list-style-type: none"> • none specific 	<ul style="list-style-type: none"> • none specific
Economic	<ul style="list-style-type: none"> • not much change – easy to understand 	<ul style="list-style-type: none"> • (as above for social)
<p>Extent to which community outcomes are achieved:</p> <p>This option would not contribute to a well governed city, as the language and coverage of the bylaw may be outmoded (and therefore hard to understand) and the bylaw will be less flexible than the preferred option, making it less useful and more expensive, as it may require frequent updating. A further issue is that aspects of the existing bylaws are unenforceable (therefore failing to meet public expectations), and carrying them over to the new bylaw is not good practice.</p>		

⁵⁰ The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: "There is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people..." (2001)

2 Cont'd

Impact on the Council's capacity and responsibilities:

The bylaw may require frequent updating due its lack of flexibility. Inspection and enforcement activity for a new bylaw is likely be similar to that required under current bylaws. Provision could be made to recover the costs of providing permits, should the Council so wish.

Effects on Maori:

There will be no specific effect on Maori.

Consistency with existing Council policies:

The Council has operational policies which currently cover a wide range of matters also covered by the bylaws (see the preferred option (above) for the list). These policies could continue to be used, but would have to align with the detail in the bylaw, which cannot be altered without undertaking the Special Consultative Procedure.

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

The Inspections and Enforcement Unit and the Legal Services Unit do not support this option.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

Other relevant matters:

Section 158 of the Local Government Act 2002 requires the Council to review two of the bylaws under consideration by 30 June 2008.

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

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941 8549
Officer responsible:	Legal Services Manager
Authors:	Judith Cheyne, Willis Heney and Paul Clark

PURPOSE OF REPORT

- The purpose of this report is to recommend to the Council that it allow the automatic revocation on 1 July 2008, under section 293(3) of the Local Government Act 2002, of the:
 - Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 (separately circulated)
 - Banks Peninsula Public Swimming Pools Bylaw 1972 (separately circulated)
 - Christchurch City Bylaw No 103 (1979) Public Swimming Pools (together, "the Bylaws") (separately circulated)

on the grounds that adequate provision for the management of amusement devices and public swimming pools is provided for by other legislation, and/or by the terms and conditions of use and the normal operating procedures for public swimming pools and other Council policies.

3 Cont'd

EXECUTIVE SUMMARY

2. A review was undertaken on the Bylaws, to ascertain whether the provisions of the Bylaws were still current or needed amendment.
3. The purpose of the Bylaws was:
 - To set the process for the licensing of shooting galleries and the issuing of permits for amusement devices.
 - To regulate public bathing and impose controls over public baths.
4. Prior to the Banks Peninsula District joining the Christchurch City Council the Council did not have bylaws covering amusement devices and nuisances. The control of amusement devices is covered by the provisions of the Amusement Devices Regulations 1978.
5. The two Swimming Pools Bylaws are very similar, but the provisions of both bylaws are now covered either by the terms and conditions of use on persons entering the particular public swimming pools or other Council policies, or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
6. There is no need to re-enact the Bylaws or make new bylaws with the same provisions because the harm the Bylaws were originally introduced to deal with is now addressed in other ways.
7. The Bylaws were made or had effect under now repealed provisions of the Local Government Act 1974, and are therefore subject to section 293(3) of the Local Government Act 2002, which provides that such bylaws, not revoked or expiring before 1 July 2008, are revoked on that date.
8. The proposal in this report is that the Council allow the Bylaws to automatically be revoked on 1 July 2008, but to give notice to the public first, of the Council's intention, to ascertain whether there are any objections to the Council simply allowing the statutory provision to take effect.

FINANCIAL IMPLICATIONS

9. There are no financial constraints to the automatic revocation of the Bylaws. If the Bylaws are revoked automatically under section 293(3) then this will be less cost for the Council than if it revoked the Bylaws prior to 1 July 2008, as this would require the use of the special consultative procedure.

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

10. Not applicable.

LEGAL CONSIDERATIONS

11. The relevant sections of the Local Government Act 2002 (LGA02) are:

s.293 Bylaws

- (1) *Bylaws made or having effect under provisions of the Local Government Act 1974 that are repealed by this Act, being bylaws that were in force immediately before the commencement of this section, are deemed to be validly made under this Act and continue in force accordingly if validly made under the Local Government Act 1974 ...*
- (3) **Every bylaw to which this section applies that is not revoked or that does not expire before 1 July 2008, is revoked on that date.**

3 Cont'd

s. 156 Special consultative procedure must be used in making, amending, or revoking bylaw made under this Act

- (1) *A local authority must use the special consultative procedure (as modified by section 86) in—...*
(c) *revoking a bylaw made under this Act.*

and

s.158 Review of Bylaws...

- (2) *A local authority must review a bylaw made by it under the Local Government Act 1974 (other than a bylaw deemed to be made under this Act by section 293)—*
(a) *no later than 1 July 2008, if the bylaw was made before 1 July 2003; and*
(b) *no later than 5 years after the bylaw was made, if the bylaw was made after 1 July 2003.*

12. This means that under the LGA02, a current bylaw made before 1 July 2003 under a now repealed provision of the Local Government Act 1974 will be automatically revoked on 1 July 2008. There is no need to review such bylaws under section 158.
13. The Amusement Devices and Public Swimming Pools Bylaws were made under now repealed provisions of the Local Government Act 1974 (sections 684(1)(30), (33), and (33A) – section 686 was also relevant). Because these were the authorising powers for making the Bylaw, and not just the procedural provisions for making the Bylaw and they have been repealed, this means they are bylaws deemed to be made under the LGA02 by section 293(1), and are subject to section 293(3).
14. The powers embodied in the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 are a duplication of provisions contained in the Amusement Device Regulations 1978. The provisions in the two Public Swimming Pools Bylaws are now covered either by the conditions of use on persons entering the particular public swimming pools or other Council policies (the normal operating procedures), or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
15. As the Bylaws provisions are not considered necessary (they would be unlikely to pass the first test in section 155 of the LGA02, that a bylaw must be the most appropriate way of addressing the perceived problem) they should therefore be revoked, and allowing them to be revoked on 1 July 2008 by the operation of section 293(3) appears to be the appropriate course of action in this case.
16. The Bylaws could be revoked earlier than 1 July 2008, in accordance with section 156 of the LGA02, which requires that the special consultative procedure be used. However, section 293(3) was included in the LGA02 by way of an amendment in June 2006. Although there is nothing specific in the explanatory note to the Bill or the Select Committee report on this addition, its purpose seems to be to avoid the need for Councils to have to use the special consultative procedure in these instances of old obsolete bylaws.

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

17. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

3 Cont'd

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

19. As above.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

20. Aligns with the "Strong Communities" strategic direction by giving the public a chance to be consulted first, via the public notice, on the Council's intention, and thereby be involved in the decision making process.

CONSULTATION FULFILMENT

21. The preferred option recommends that a public notice be issued to ascertain the views of the public before the Council simply allows the Bylaws to be revoked in accordance with section 293
22. Members of the former Bylaw Reviews Subcommittee were contacted by e-mail and asked to raise any concerns they had about these bylaws being treated in this manner. No concerns were raised by subcommittee members.

STAFF RECOMMENDATION

That the Committee recommend that the Council resolve:

- (a) That its intention is to allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools to be revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002, on the grounds that the provisions in these bylaws are redundant in that they are either covered by other legislation, and, in the case of public swimming pools, are no longer needed because of other council policies and the terms and conditions of use and normal operating procedures of the public swimming pools.
- (b) To issue a public notice in relation to resolution (a), seeking comments from the public on the Council's intention, and providing that any comments must be given to the Council within 1 month of the date of publishing the notice.
- (c) To consider any comments received from the public and then make a final decision on its intention in resolution (a).

COMMITTEE RECOMMENDATION

It is recommended that the Council resolve:

- (a) That its intention is to allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools to be revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002, on the grounds that the provisions in these bylaws are redundant in that they are either covered by other legislation, and, in the case of public swimming pools, are no longer needed because of other council policies and the terms and conditions of use and normal operating procedures of the public swimming pools.
- (b) To issue a public notice in relation to resolution (a), seeking comments from the public on the Council's intention, and providing that any comments must be given to the Council within one month of the date of publishing the notice.
- (c) To consider any comments received from the public and then make a final decision on its intention in resolution (a).

3 Cont'd

BACKGROUND (THE ISSUES)

Background On Banks Peninsula Amusement Devices And Shooting Galleries Bylaw 1996

23. In 1996 the Banks Peninsula District Council adopted a number of chapters of the New Zealand Standard Model Bylaws to apply in the district, including NZS 9201, Chapter 10:1972 Amusement Devices and Shooting Galleries.
24. The Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 provides that no land or building shall be used as a site for an amusement device unless the device has a permit from the Council under the Amusement Devices Regulations 1968. There are also safety precautions the proprietor of the amusement device must comply with. The bylaw also provides for the licensing of any land or building used as a shooting gallery to which the public have access.
25. There was no equivalent Christchurch City bylaw and no record of any need for such a bylaw. The provisions in the LGA74 under sections 684(1)(31) and 686 related to bylaws for such matters have been revoked. The Amusement Device provisions in the bylaw duplicate the provisions of the Amusement Device Regulations 1978, and the safety requirements set out in the bylaw are inserted as Conditions on the Permit, as provided for by regulation 11. There is no record of any Shooting Gallery within the city and it is considered that this entire bylaw is obsolete and should be left to be revoked in accordance with section 293(3).

Background on the Banks Peninsula Public Swimming Pools Bylaw 1972 and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools

26. The Public Swimming Pools Bylaw permits the local authority or superintendent to enforce operating procedures for the pool. For example, close the swimming pool in an emergency, charge fees and granting coaching and teaching rights. It also covers persons wearing medical dressings being prohibited from using the swimming pool, requires appropriate swimwear to be worn, provides controls over improper use of the swimming pool, unnecessary loitering and the causing of undue noise. It gives the superintendent power to prohibit anyone, who has been asked to leave the pool, from re-entering it for such period as he deems fit.
27. The Christchurch City Council in 1979 and Banks Peninsula District in 1972 adopted Chapter 16, from the New Zealand Standard Model Bylaws NZS 9201 covering Public Swimming Pools. This is based on a 1972 model bylaw standard, that in turn was based a 1952 Standard (NZS791, Part XIV – Public Baths and Swimming Pools). The 1972 Standard supersedes the 1952 Standard.
28. The NZS9201, Chapter 16, was reconfirmed by New Zealand Standard in 1980. It was then superseded in 1999 Bylaws Cultural and Recreation Facilities NZS9201:16 -1999.
29. The Cultural and Recreational Facilities NZS9201:16 -1999 Standard Bylaws were withdrawn on 18 May 2007 with no replacement.
30. The Christchurch City Public Swimming Pools Bylaw has not been used or enforced by the Council since its introduction. No evidence can be found to demonstrate enforcement of the Banks Peninsula Bylaw.
31. The Bylaw provisions have not needed to be enforced because they have been overtaken by other legislation (the Health and Safety in Employment Act, and the Crimes Act), Council policies (fees and charges) and comprehensive industry wide quality standards which have been incorporated into Council operating policy. As the owner of the swimming pools the Council also has terms and conditions of use, that persons who enter the pool premises are required to comply with. Council continually enforces the operation of its swimming pool policy and conditions, and duties under the relevant statutes. Council continually audits its performance both internally and externally.

3 Cont'd

THE OBJECTIVES

32. To recommend the appropriate option to the Council to enable the Bylaws to be revoked on 1 July 2008 in accordance with section 293(3) of the LGA 02.

THE OPTIONS

33. The Council has the following options for dealing with the revocation of these section 293 bylaws:

Option 1

34. The Council may revoke the Bylaws now.

Under section 293(1) of the LGA02, a bylaw made under repealed provisions of the LGA74 is deemed to be a bylaw validly made under the LGA02. Therefore, if the bylaw is to be revoked before 1 July 2008, section 156 of the LGA02 applies, and the revocation must be in accordance with the special consultative procedure set out in sections 83 and 86. This requires that a statement of proposal and summary of information be prepared, approved by the Council and distributed/publicly notified, providing for a period within which submissions can be made on the proposal, of not less than one month. If anyone requests to be heard in relation to their submission then the Council must also provide for this, before making a final decision on whether or not to revoke the bylaw.

Option 2

35. Revoke the Bylaws now, and replace with new Bylaws.

This is the same as Option 1, with the addition of making new bylaws on the same subject matters as the revoked bylaws (and revoking the old bylaws within the body of the new bylaws). However, it does not appear that could be justified in terms of the test in section 155(1), that a bylaw be the most appropriate way to address the problem, given the background issues discussed above.

Option 3

36. The Bylaws may be left to lapse/be revoked automatically.

Under section 293(3), bylaws made or having effect under provisions of the LGA74 that are repealed by the LGA02, and that are not revoked, or do not expire, before 1 July 2008, are automatically revoked on that date. Allowing such bylaws to be revoked automatically under section 293(3) would remove the need to undertake any special consultative procedure. Notice could be given to the public on 1 July 2008 of the bylaws that have been revoked on this date. This option could be seen by the public as the Council not acting transparently, and hiding the fact that these bylaws will no longer be applicable on 1 July 2008 (even if they are redundant and are not currently acted on by the Council).

Option 4

37. The Council gives public notice of its intention to let the Bylaws be automatically revoked.

This is the same as option 3 above, but notice would be provided to the public first, so that if anyone objects to the Council simply acting in accordance with section 293(3), the Council is aware of those views before making a final decision to allow the bylaws to be automatically revoked on 1 July 2008.

3 Cont'd

THE PREFERRED OPTION**Option 4**

38. As it will mean the public can express a view on whether or not the bylaws should be left to lapse under section 293(3), and the Council can then take those views into account before it confirms its intention. Allowing the bylaws to be revoked under section 293(3) involves significantly less expense and use of Council resources than a special consultative procedure.

ASSESSMENT OF OPTIONS**The Preferred Option**

39. Option 4.

The Council gives public notice of its intention to let the Bylaws be automatically revoked on 1 July 2008.

	Benefits (current and future)	Costs (current and future)
Social	The public can have a say on whether or not the Council should allow the Bylaws to be revoked automatically There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked Compliance with section 293(3) of the LGA02	None
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaws environmental issues	None
Economic	Revoking the Bylaws means there will be no ongoing requirement that it should be enforcing these Bylaws	Costs of the public notice
<p>Extent to which community outcomes are achieved: Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Giving public notice first will assist in achieving the community outcome "a well governed city".</p> <p>Impact on Council's capacity and responsibilities: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies: The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, but the delay in revocation, until July 2008, means that overlap will continue for longer than if these bylaws were revoked sooner.</p> <p>Views and preferences of persons affected or likely to have an interest: The preferred option of Inspections and Enforcement and Recreation & Sports staff.</p> <p>Other relevant matters: None known.</p>		

3 Cont'd

Option 3

40. The Bylaws revoke automatically on 1 July 2008, without prior public notice.

	Benefits (current and future)	Costs (current and future)
Social	There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked Compliance with section 293(3) of the LGA02	Without advising the public first that the Bylaws will revoke automatically there may be criticism of the Council for not acting transparently
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaws environmental issues	None
Economic	Revoking the Bylaws means there will be no ongoing requirement that it should be enforcing these Bylaws	No effect on cost, as the Bylaws are not enforced/acted on in any way currently; any enforcement required is carried out through other legislation
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Failing to advise the public first means the community outcome "a well governed city" may not be achieved.</p> <p>Impact on Council's capacity and responsibilities:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies:</p> <p>The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, but the delay in revocation, until July 2008, means that overlap will continue for longer than if these bylaws were revoked sooner.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

Option 2

41. Revoke the Bylaws now, and replace with new Bylaws.

	Benefits (current and future)	Costs (current and future)
Social	The public is consulted There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked and, if necessary, replaced	Having new Bylaws that overlap with other legislation and Council policies Overrides the mechanism provided in section 293(3) of the LGA02
Cultural	No specific matters	None
Environmental	No specific matters	None

3 Cont'd

Economic	None	Costs of the special consultative procedure and the ongoing costs of enforcing the new Bylaws
<p>Extent to which community outcomes are achieved: Any community outcomes that are relevant to the Bylaws will still be achieved if new Bylaws were enacted. Using the special consultative procedure will assist in achieving the community outcome "a well governed city", but having new Bylaws that overlap with existing legislation and policies may not achieve this community outcome.</p> <p>Impact on Council's capacity and responsibilities: None.</p> <p>Effects on Maori: None.</p> <p>Consistency with existing Council policies: The overlap with existing policies will remain.</p> <p>Views and preferences of persons affected or likely to have an interest: Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters: None known.</p>		

Option 1

42. Revoke the Bylaws now.

	Benefits (current and future)	Costs (current and future)
Social	The public is consulted There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked	Overrides the mechanism provided in section 293(3) of the LGA02
Cultural	No specific matters	None
Environmental	No specific matters	None
Economic	None	Costs of the special consultative procedure
<p>Extent to which community outcomes are achieved: Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Using the special consultative procedure will assist in achieving the community outcome "a well governed city".</p> <p>Impact on Council's capacity and responsibilities: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies: The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, and there will be no delay in that revocation.</p> <p>Views and preferences of persons affected or likely to have an interest: Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters: None known.</p>		

4. THE REVOCATION OF THE BANKS PENINSULA DISTRICT COUNCIL NUISANCES BYLAW 1996

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

PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Council the revocation of the Banks Peninsula District Council Nuisances Bylaw 1996 (the "Bylaw") (Appendix 1 - separately circulated) on the grounds that adequate provision for the management of the nuisances in the Banks Peninsula area exist under other legislation.

EXECUTIVE SUMMARY

2. The purpose of the Bylaw was to control various nuisances in the Banks Peninsula District. Prior to the Banks Peninsula District joining the Christchurch City Council the Council did not have a bylaw to cover these nuisances.
3. A review of the Bylaw has been undertaken to ascertain whether the provisions of the Bylaw are still required. There seems to be no need to continue or replace the Bylaw because the problem addressed in the Bylaw can be dealt with by the Council either under the enforcement powers of the Health Act 1956, the Resource Management Act 1991, or in other ways.
4. It is recommended that the Bylaw be revoked by way of a special consultative procedure. This can be carried out concurrently with another special consultative procedure being held in relation to another bylaw review.

FINANCIAL IMPLICATIONS

5. The financial implications with the revocation of the Bylaw largely relate to whether the special consultative procedure is used to revoke the Bylaw. However, the proposal to revoke this Bylaw can be included at the same time as consultation on other bylaws, under s83A of the Local Government Act 2002 (LGA 02), which would reduce the expense for the Council.

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

6. Not applicable.

LEGAL CONSIDERATIONS

7. The Banks Peninsula District Council Nuisances Bylaw 1996 that was adopted was the 1972 NZ Standard Model General Bylaw, chapter 11. The Bylaw may have been made under both the Local Government Act 1974 (LGA 74) and the Health Act 1956, although it is not clear. Section 648(1)(8) LGA 74 was the power to make a bylaw for the purposes of "*conserving public health, wellbeing, safety, and convenience, and regulating drainage and sanitation*", but it seems more likely that the Bylaw was made under the more specific provisions of the Health Act 1956, under the bylaw-making powers for local authorities provided for in sections 23(e) and 64 of that Act. In addition, the Bylaw adopted by Banks Peninsula was the pre LGA 74 model bylaw.
8. The Model Bylaw itself does not identify which Act or Acts the various provisions of the Bylaw were made under. The text of the resolution of the Banks Peninsula District Council when it approved the adoption of the Model General Bylaws in 1996, stated that "*in terms of section 716B of the Local Government Act 1974 the following special order on bylaws be confirmed to take effect from 1 July 1996...*" and listed all the bylaws, again without reference back to the Act or Acts they were made under.

4 Cont'd

9. Section 716B related to the procedural use of special orders to make a bylaw, rather than the authorising bylaw-making power coming from that section. Bylaws made under the Health Act had to be made using a special order (and in accordance with section 681 of the LGA74), because of the former wording of section 67(1) of the Health Act 1956.
10. Section 67 currently provides that: "*All bylaws made by a local authority under this Act must be made in the same manner in all respects as if they were bylaws made pursuant to the Local Government Act 2002*". However, such bylaws are not *deemed* to have been made under the LGA 02, and there is no requirement that they be reviewed under section 158 of the LGA 02.
11. Council staff have, however, considered this bylaw in the context of the Bylaws review process and concluded that the provisions of this bylaw are not necessary, because there is other legislation that the Council can use instead to enforce the matters covered by the bylaw (see the analysis table - Appendix 2). This means that the first test in section 155 of the LGA 02, that a bylaw must be the most appropriate way of addressing the perceived problem, is not likely to be met.
12. The LGA 02 specifies in section 156 that the special consultative procedure must be used when making, amending or revoking a bylaw "*made under this Act*". This may mean that the Council would not have to use the special consultative procedure to revoke this bylaw, because it was not made under the LGA 02 (it has been made under the Health Act, or the Health Act and the LGA 74 together). In addition, section 67 of the Health Act only refers to how bylaws under the Health Act are made; there is nothing about how to revoke a Health Act bylaw. The LGA 74 provisions for revoking a bylaw have been repealed.
13. A Council resolution is definitely required before the Bylaw can be revoked, but it is not clear from the legislation, and there is no case law on this issue, whether or not the special consultative procedure needs to be used first. However, as section 67 provides the manner for making a bylaw (which would require the use of the special consultative procedure), it seems more appropriate that it also be revoked in the same manner.
14. The Legal Services Unit recommends that the special consultative procedure be used, even though there is very little risk of a challenge being made if it is not used. It is a better from a public relations point of view to consult with the Banks Peninsula ward as to whether or not they consider this bylaw is required. Section 83A of the LGA 02 provides that a special consultative procedure can be carried out at the same time as another special consultative procedure.

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

14. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

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

16. As above.

4 Cont'd

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

17. Aligns with the "Strong Communities" strategic direction by giving the public a chance to be consulted, via an SCP, and thereby be involved in the decision making process before this bylaw is revoked.

CONSULTATION FULFILMENT

18. As above for external consultation. Internal consultation has taken place with the Inspections and Enforcement Unit who do not consider this Bylaw to be necessary.

STAFF RECOMMENDATION

That the Committee recommend that the Council resolve:

- (a) To revoke the Banks Peninsula Nuisances Bylaw 1996 following a special consultative procedure.
- (b) To adopt the statement of proposal and summary of information (Appendix 3 - separately circulated) to be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website, from 17 March 2008.
- (c) That public notice of the proposal be given as close as possible to 17 March 2008.
- (d) That the period within which written submissions may be made to the Council be between 17 March and 16 April 2008.
- (e) To appoint a Hearings Panel comprising [the members to be named at the Council meeting] to consider and, where necessary, hear any submissions on the proposal to revoke the Banks Peninsula District Council Nuisances Bylaw 1996.

COMMITTEE RECOMMENDATION

It is recommended that the Council resolve:

- (a) To revoke the Banks Peninsula Nuisances Bylaw 1996 following a special consultative procedure.
- (b) To adopt the statement of proposal and summary of information (Appendix 3 - separately circulated) to be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website, from 17 March 2008.
- (c) That public notice of the proposal be given as close as possible to 17 March 2008.
- (d) That the period within which written submissions may be made to the Council be between 17 March and 16 April 2008.
- (e) To appoint a Hearings Panel comprising [the members to be named at the Council meeting] to consider and, where necessary, hear any submissions on the proposal to revoke the Banks Peninsula District Council Nuisances Bylaw 1996.

4 Cont'd

BACKGROUND (THE ISSUES)

Background On Banks Peninsula District Council Nuisances Bylaw 1996

19. In 1996 the Banks Peninsula District Council adopted a number of chapters of the New Zealand Standard Model Bylaws to apply in the district, including NZS 9201, Chapter 11:1972 Nuisances.
20. The 1972 model bylaw standard was simply a revision of a 1952 standard bylaw. It covered a number of matters that are now covered by the nuisance sections of the Health Act 1956, and indeed were covered at the time of the 1972 review. Section 29 of the Health Act 1956, defines nuisances and then other sections of the Health Act give the Council the powers to take action in relation to those nuisances, including bringing enforcement proceedings and in some cases abating a nuisance without notice. Some parts of the Bylaw are also covered by provisions of the Resource Management Act 1991 and the Building Act 2004. See the table analysing the bylaws provisions (Appendix 2 - separately circulated).
21. Clauses 3, 16 and 17 of the Christchurch City Refuse Bylaw 1995 may also apply to some "nuisance" situations in this Bylaw although they are not intended to be used in this way, and the nuisance sections in the Health Act 1956 would be the preferred option for dealing with any issues.
22. The conclusion is that this bylaw is obsolete and should be revoked, rather than be allowed to continue "on the books", but never acted upon by the Council.

THE OBJECTIVES

23. To recommend the revocation of the Banks Peninsula Nuisances Bylaw 1996, by way of the special consultative procedure.

THE OPTIONS

24. The Council has the following options:
 - (a) Do nothing and not revoke the Bylaw - in which case it will continue until legislation is introduced to revoke the Bylaw, or the Council later chooses to revoke the Bylaw, but the Council would never act upon or enforce the bylaw because it has more relevant powers, with higher penalties, under other legislation.
 - (b) Revoke the bylaw by resolution only – there is a very minor risk that someone could challenge the Council by arguing that the procedure used was not correct, if it does not use the special consultative procedure. However, it is difficult to imagine what loss might be caused to someone if the revocation is not carried out using the correct procedure.
 - (c) Revoke the bylaw by using the special consultative procedure – although it is not clear from the legislation that this procedure is required for a bylaw not made under the LGA 74 or the LGA 02, it seems the likely procedure and it is appropriate to consult with the community on this matter.

THE PREFERRED OPTION

25. Option (c) is the preferred option.

4 Cont'd

ASSESSMENT OF OPTIONS**The Preferred Option (option (c))**

26. The Council uses the special consultative procedure before revoking the Bylaw.

	Benefits (current and future)	Costs (current and future)
Social	The public can have a say on whether or not the Council should revoke the Bylaws There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by revoking such Bylaws	None
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation is in effect to deal with the subject matter of the Bylaw's environmental issues	None
Economic	Revoking the Bylaw means there will be no ongoing obligation on Council to monitor this Bylaw	Costs of the SCP
<p>Extent to which community outcomes are achieved: Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation deals with the same subject areas. Consulting first will assist in achieving the community outcome "a well governed city".</p> <p>Impact on Council's capacity and responsibilities: None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Effects on Maori: None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies: Consistent.</p> <p>Views and preferences of persons affected or likely to have an interest: The preferred option of Inspections and Enforcement staff.</p> <p>Other relevant matters: None known.</p>		

4 Cont'd

Option 2

27. The Bylaw is revoked by resolution only, without an SCP.

	Benefits (current and future)	Costs (current and future)
Social	There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked	Without consulting with the public first there may be criticism of the Council for not acting transparently
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaw's environmental issues	None
Economic	Revoking the Bylaw means there will be no ongoing requirement that Council should monitor this Bylaw	No effect on cost, as the Bylaws are not enforced/acted on in anyway currently; any enforcement required is carried out through other legislation
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaw will still be achieved because other legislation or policies deal with the same subject areas. Failing to consult with the public first means the community outcome "a well governed city" may not be achieved.</p> <p>Impact on Council's capacity and responsibilities:</p> <p>None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Effects on Maori:</p> <p>None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies:</p> <p>Consistent.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

4 Cont'd

Option 1

28. Do nothing.

	Benefits (current and future)	Costs (current and future)
Social	None	No benefit for the community in having an obsolete and redundant Bylaw remain in existence
Cultural	No specific matters	None
Environmental	No specific matters	None
Economic	None	None
<p>Extent to which community outcomes are achieved: "A well governed city" may not be achieved because having old redundant bylaws still current is not good governance.</p> <p>Impact on Council's capacity and responsibilities: None.</p> <p>Effects on Maori: None.</p> <p>Consistency with existing Council policies: Potential for inconsistency.</p> <p>Views and preferences of persons affected or likely to have an interest: Not the option preferred by Inspections and Enforcement staff.</p> <p>Other relevant matters: None known.</p>		

**PART C - REPORT ON DELEGATED DECISIONS
 TAKEN BY THE COMMITTEE**

5. RESOLUTION TO EXCLUDE THE PUBLIC

The Committee **resolved**:

1. That the draft resolution to exclude the public set out on page 306 of the agenda be adopted.
2. That James Winchester Simpson Grierson, Wellington be permitted to remain because of his knowledge of the topic under discussion.

CONSIDERED THIS 28TH DAY OF FEBRUARY 2008

MAYOR