

6. HEARING PANEL REPORT ON THE PROPOSED PARKS AND RESERVES BYLAW

| | |
|---------|----------------------------------|
| Author: | Parks and Reserves Hearing Panel |
|---------|----------------------------------|

PURPOSE OF REPORT

1. This is a report of the Hearing Panel on its consideration of the proposed Christchurch City Council Parks and Reserves Bylaw 2008. It summarises the submissions received through the Special Consultative Procedure on the proposed bylaw and contains recommendations from the Panel altering the proposed Bylaw in certain respects. The proposed bylaw (with the recommended changes highlighted) is attached to this report.
2. The report recommends the adoption of the Christchurch City Council Parks and Reserves Bylaw 2008, as attached.

EXECUTIVE SUMMARY

3. On the 27 March, the Council adopted the proposed Parks and Reserves Bylaw for consultation. Submissions were received between 12 April to 14 May 2008. Ten submissions²⁷ were received with seven requesting to be heard by the Hearing Panel. In addition two additional submitters were heard by the Panel Mr P. Wright regarding a reserve in Ferrymead and Mr P. Newson of the NZ Model Aeronautical Association. The hearings and consideration of all submissions were undertaken on the 4 June and 9 June 2008. The panel was chaired by Councillor Sue Wells, and the panel members were Councillors Sally Buck, Barry Corbett, and Chrissie Williams.

SUMMARY OF THE PROPOSED BYLAW

4. The objective of the bylaw is to provide for reasonable controls for the health and safety, and the avoidance of nuisance to the public using parks and reserves, to the extent that the controls fulfil the provisions of the Local Government Act 2002 and appropriate community outcomes. The purpose of the proposed bylaw will be to manage parks and reserves in such a way as to balance the various different, and sometimes competing, lawful uses for which parks and reserves may be used.
5. The proposed bylaw brings together and reviews the seven bylaws or parts of bylaws that are still operative in relation to Parks and Reserves. These bylaws having not been reviewed since the earlier amalgamation of local authority areas in Christchurch in 1989. The bylaws are:
 - Christchurch City Council Bylaw 118 – Parks and Reserves 1981
 - Christchurch City Council Bylaw 120 – Avon Heathcote Estuary and Rivers 1982
 - Banks Peninsula District Council Bylaw – Parks and Reserves 2003
 - Heathcote County Council Bylaw – Reserves 1933 (No.1)
 - Riccarton Borough Council Bylaw (No.1) part 8 Parks and Reserves
 - Waimairi County Council Bylaw (No.1) – 1966 part vii Reserves and Domains
 - Paparua County Council General Bylaw – 1981 section 15 Reserves.

SUMMARY OF SUBMISSIONS

6. These covered issues relating to definitions of camp and officer; reserves open to the public, behaviour in reserves; animals; water; vehicles and other traffic; camping and tents and booths; operation of aircraft; sports and games; and leased and special areas.

²⁷ John Leenen; Avon Heathcote Estuary Ihutai Trust; Lyttelton Sea Scout Group; Akaroa-Wairewa Community Board; Burwood-Pegasus Community Board; Federated Farmers; Canterbury Hang Gliding and Paragliding Club; Canterbury Netball Inc; Hagley Tennis Club; The Friends of the Park at 125-129 Packer Street Inc
Council Agenda 19 June 2008

SUBMISSIONS DEFINITIONS

7. The submissions on the definitions under clause 4 *Interpretation* largely focused on "Camp" and "Officer". In relation to "Camp" concern was raised about the clarity of the definition and the fact it does not take into account the long standing association of camp with habitation, rather than the act of erecting a structure or tent; and that the current definition could mean groups such as Scouts teaching the skills of erecting a tent would need to get written permission to do this. In relation to "Officer" the submitter called for clarification as to whether it is only the Banks Peninsula Community Boards who appoint reserve committee members and if this is so they request clarification in the clause.

Hearing Panel Decision

8. The Panel considered that the definition of "camp" should be changed to reflect that contained in the Public Places bylaw covering the activity of "residing in or sleep in" and to make subsequent amendments to the clause relating to camping in reserves. The Panel recommends the following definition be included in clause 4 of the bylaw.

"Camp" means to reside in or sleep in a structure, tent, caravan, or campervan."

In regard to the inclusion of reserve committee members under the definition of "officer" or "authorised officer" it was considered a generic reference to Community Boards should remain rather than limit it to the two Banks Peninsula Community Boards which currently have such reserve committees. This would avoid having to undertake bylaw changes should other Community Boards develop such committees in the future.

RESERVES OPEN TO THE PUBLIC CLAUSE 5

9. Submitters sought clarification that clause 5 provides for exclusive rights of a group who have rights under clause 14 (Sports and Games). The submitter notes that there may be other bylaws that clarify this position but would like to see Clause 5 more explicit in its wording to make specific reference to Clause 14 for avoidance of doubt. The issue also was raised in regard to reserve areas which are subject to lease and the activities that may be undertaken.

Hearing Panel Decision

10. The Hearing Panel were advised that some reserve areas were subject to leases and the control of activities on such were not caught by the bylaw provisions. To avoid doubt the Panel recommends that the following clause be added to the definition of reserve:

"(b) does not include any reserve, park, garden or greenspace area or part of such reserve, park, garden, or greenspace area which is subject to a lease that had been granted by the Council under the Local Government Act 2002 or the Reserves Act 1977."

The Panel did not consider any change was needed in the clause related to Sports and Games but suggested the following explanatory note should be added to the clause as follows:

(The following note is explanatory and does not form part of the bylaw, but is intended to explain its general effect. This clause is not intended to prohibit the playing of impromptu games on reserves by groups such as scouts, guides, youth groups, or other recreational or family groups.)

BEHAVIOUR IN RESERVES CLAUSE 6

11. One submitter requested that trees not be permitted to be planted in a fire break zone and that any planted should be removed to reduce fire hazard to adjacent residential dwelling(s). Another submitter raised the issue that agreements currently in place, such as the Packer Street Community Garden (a community garden on Council Reserve), are not identified and acknowledged in the bylaw and need to be along with any other agreements under the Adopt-a-Park programme.

Hearing Panel Decision

12. The Panel considered the first issue was more properly an operational issue and not a matter to be included in the bylaw. The explanatory note to this clause states that the clause should be read in conjunction with other appropriate legislation that may apply. In the case of the community gardens issue it was considered that an additional sub clause could be added to make provision for such activities as follows:

“(2) Subclause (1) does not apply to any volunteer activities in a reserve if the Council has entered into an agreement with any person or body in relation to those activities and those activities are bound by the conditions of that agreement.”

ANIMALS CLAUSE 7

13. Two submissions raised concerns about the lack of provisions in the proposed bylaw for activities such as the A & P show and Pony Club to continue without getting regular, specific permission when these activities have a long standing history in the Banks Peninsula area on some reserves. Questions were also raised about the timeline for granted permits. One submitter requests that provision be made under clause 7 for existing events which involve animals to be held. One submission requested a provision that was previously in Christchurch City Bylaw No. 120 relating to the Avon-Heathcote Estuary prohibiting horses be carried over to the new bylaw.

Hearing Panel Decision

14. The Panel considered there should be provision for such events either through reserve management plans or licences, where appropriate, or as part of the approval for the booking of reserves for events involving animals. They recommend that the bylaw be changed to make such provision by the addition of the following sub clauses:

- “(b) the Council has authorised the presence of animals through a reserve management plan, licence or other similar document; or
(c) permission has been granted by an Authorised Officer; or
(d) the reserve has been booked for an event allowing the presence of animals.”**

The Panel was uncertain that sufficient evidence existed for any significant nuisance caused by horses in the Estuary, nor any evidence that it was a regular activity needing control by prohibition. There was some discussion that it was not currently a problem due to the previous bylaw containing a prohibition. However, it has made provision for such controls by an additional sub clauses in the “Animals” clause:

- “(3) Except with the permission of an Authorised Officer, no person may –
(a) Bring or drive any horse or other animal on to any part of the Avon Heathcote Estuary; or
(b) Permit any horse or other animal in his or her custody, charge or control to wander on to or remain on any part of the Avon Heathcote Estuary.
(4)The Council may seize and confine any horse or other animal found on any part of the Avon Heathcote Estuary in breach of this Bylaw.
(5)The Avon Heathcote Estuary means that area shown in the attached plan in Schedule 3.**

WATER

15. Two submitters raised concerns over the Council's intention to prohibit bathing or wading in a reserve where it is not authorised by the Council. One submitter felt this was unduly excessive and would be very difficult to enforce. While another submitter noted that bathing and wading would go hand-in-hand with other community activities utilising a reserve.

Hearing Panel Decision

16. The Panel considered the clause was not considered needed as the matter of contamination of water was an issue under the control of Environment Canterbury. It was accepted that bathing or wading in any water in any reserve was not a matter that could be sensibly controlled by requiring authorisation by the Council. The decision was to recommend removal of the clause in its entirety.

VEHICLES, OTHER TRAFFIC, MECHANICAL DEVICES AND VESSELS CLAUSE 8

17. Submitters on this clause focused on three different areas. The first requesting an extension of the clause to allow goods and service access to the boundary of an adjacent residential dwelling. The second submitter noted the prescriptive nature of clause 8(4) and suggests that anything outside the prescribed machines could be used without restriction. It was suggested that a definition of mechanical device could be included in the interpretation as an alternative to the list in the clause. The third submitter suggested the use of specific time periods instead of the terms 'wintering' and 'laying up' to aid general public understanding.

Hearing Panel Decision

18. The Panel considered that the matters raised by the first submitter were not needed in the bylaw. Staff advised that the Council has a Temporary Access Licence Procedure to cover such eventualities. Staff advised that the words used in the clause were sufficient for the purpose and not needed in the interpretation clause as they apply only to clause 8. In regard to the third submitter it was accepted that the clause could be clarified and it is recommended the clause be suitably amended as follows:

**“(5) No person may use a reserve or the foreshore as a storage area for any vessel or other watercraft for a continuous period exceeding 7 days while that vessel or watercraft is not being used in the water, unless –
(a) the person has obtained the prior written permission of an Authorised Officer; or
(b) it is in an area specially set aside for this purpose.”**

TENTS AND BOOTHS CLAUSE 11

19. Concern was raised by submitters at two levels. The first concern being the apparent requirement for groups such as Scouts to need to get permission and pay a fee to participate in regular skill sessions such as erecting tents (as part of their aims and objectives). They request clarification as to the intent of this clause and also a clear definition of structure. The second concern raised focuses on the requirement for any person to apply for separate written permission to erect a stall, booth or tent on a reserve when that person has already made arrangements to hire the ground from the Council e.g. local organisation hiring the ground for a carnival. They request that a sub-clause be added to allow for people who hire a reserve to also be permitted to erect tents etc as part of the conditions of hire. They also suggest that if this is the intention of sub-clause (b) then the wording of the sub clause be clarified.

Hearing Panel Decision

20. The Panel considered there needed to be controls over the erections of such equipment to protect the infrastructure of reserve areas, including water systems, and ensure compliance with requirements of the Building Act. The Panel considered that light casual shade tents could be excluded as they were less likely to create damage. In regard to the matter of obtaining approval if that was provided for camping in a reserve such approval would not be needed. A new sub clause was inserted to cover that eventuality. The clause is intended to apply to circus or carnival tents and associated structures and corporate hospitality tents for example.

AIRCRAFT CLAUSE 12

21. One submitter was concerned that the Bylaw Aircraft interpretation may preclude the hang gliding and paragliding club from continuing to take-off and land in certain parks and reserves around Christchurch, as they have done for many years. A further submitter raised the issue of using parks and reserves for the purposes of operating and flying power driven model aircraft.

Hearing Panel Decision

22. Staff advised that it was never the purpose to remove existing permissions given under previous bylaws as applied to the Canterbury Hang Gliding and Paragliding Club. It was suggested that a savings provision should be included to clarify the situation and this is contained in clause 19 of the bylaw. The Panel recommends the adoption of this provision. In the case of flying model powered aircraft it was advised, by the submitter, that light weight battery or electric powered model aircraft which are radio-controlled are suitable for use in a number of parks and reserves and the Panel accepted these submissions. The Panel recommends making the following provision in the bylaw to enable such to occur on suitable reserves:

- “(3) Despite subclause (1), a person may operate a power driven model aircraft in a reserve if–**
- (a) the Council has set aside an area for that purpose, and then only in accordance with such conditions that are set by Council; or**
 - (b) with the prior written permission of an Authorised Officer.**
 - (c) the model aircraft:**
 - (i) is radio-controlled and either battery or electric powered; and**
 - (ii) has a total flying weight of not more than kilogramme: and**
 - (iii) does not cause annoyance or inconvenience to other users of the reserve; and**
 - (iv) does not over-fly the boundaries of the reserve; and**
 - (v) does not fly in a reserve referred to in subclause (4).**
- (4) The Council may by resolution determine any reserve where model aircraft which are radio-controlled and either battery or electric-powered may not be flown.**
- (5) The Council may by resolution subsequently amend or revoke any resolution made under subclause (4).”**

SPORTS AND GAMES CLAUSE 13

23. One submitter noted that there is no definition of ‘sports and games’ and expressed concern that the restriction of organised sports games to designated sports fields will unnecessarily impinge on the ability to enjoy physical exercise, play a spontaneous game of sport or participate in Scouting games.

Hearing Panel Decision

24. Staff advised that it was not the intention to prohibit the impromptu or informal playing of games in Council parks and reserves. However, once they become organised the Council does need some control as these should be played on areas where there is the correct surface and they do not impinge on the rights of others to enjoy the areas. The Panel recommends the addition of the following explanatory note:

SPECIAL AREAS - RAWHITI GOLF COURSE

25. The submitter noted an error under clause 16(2) and suggests the reference should read sub clause (1) rather than sub clause (2).

SPECIAL AREAS – LEASED AREAS WITHIN RESERVES

26. One submitter notes with concern that the terms of the proposed bylaw do not take into account areas in reserves subject to lease agreements, and highlights instances where the terms of the lease agreement and the proposed bylaw may be in conflict. They request this be clarified in the bylaw.

SPECIAL AREAS – COMMUNITY GARDENS

27. One submitter raises the issue that agreements currently in place, such as the Packe Street Community Garden (a community garden on Council Reserve), are not identified and acknowledged in the bylaw and need to be along with any other agreements under the Adopt-a-Park programme.

HEARING PANEL RECOMMENDATIONS

The Hearing Panel recommends that the Council:

- (a) Resolve to adopt the Christchurch City Council Parks and Reserves Bylaw 2008, as amended **(attached)**.
- (b) Give public notice as soon as practicable, that the Christchurch City Council Parks and Reserves Bylaw 2008 has been adopted by Council, that it comes into effect on 1 July 2008, and that copies of the bylaw will be made available.
- (c) Send copies of the Bylaw to those people or organisations that made submissions, and send a letter to those to whom the consultation notification was initially sent, advising them of the outcome.