REGULATORY AND PLANNING COMMITTEE
11 MARCH 2008

A meeting of the Regulatory and Planning Committee was held on Tuesday 11 March 2008 at 9.30am

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

IN ATTENDANCE: Councillors Bob Shearing (to 12.05pm), Mike Wall (to 12 noon) and Norm Withers to (11.25am).

APOLOGIES Councillors Sally Buck and Ngaire Button retired at 12 noon and were absent for part of clause 1.

The Committee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. BRIDLE PATH ROAD DRAFT AREA PLAN

General Manager responsible:	General Manager Strategy and Planning DDI 941-8177
Officer responsible:	Liveable City Programme Manager
Author:	Ivan Thomson, Team Leader, Policy & Planning

PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's adoption of:

   - 'Development Option 2' as the preferred option for inclusion in the Draft Bridle Path Road Area Plan, and
   - adoption of the Draft Bridle Path Road Area Plan for public consultation.

   A locality map is included in Attachment 1.

EXECUTIVE SUMMARY

Preferred Development Option

2. The land which is the subject of the Bridle Path Road Area Plan comprises 10 lots ranging from 607m^2 to 5.42 hectares. It was zoned 'Rural Horticultural Sub-Zone' in the Proposed City Plan notified in 1995. Several submissions were lodged requesting that the land be rezoned for residential purposes. The Council rejected these submissions and rezoned the area Rural 7. Appeals to the Environment Court against the Council decision followed, and subsequent negotiations between the appellants and the Council led to a Consent Order being signed by parties to the appeal, changing the zoning to Deferred Living Hills A.

3. The Consent Order required seven issues to be addressed prior to residential zoning taking effect. The main issue was land stability, with the area being susceptible to rockfall, landslide and erosion hazards. Other issues identified by the Court as needing further consideration included matters relating to set backs, reverse sensitivity, access and stormwater disposal.

1 Cont'd

Land stability

4. A preliminary geotechnical study identified the nature and distribution of geotechnical hazards in the area. Four hazard areas were identified. Based on a qualitative assessment of risk, these hazard areas provide a useful general guide to the likely location and significance of natural hazards present on this land, which in turn provides general guidance on potential development constraints.

5. A second geotechnical study focused on mitigation options and strategies that might best achieve appropriate outcomes for the deferred LHA zone. Cost estimates for various options were also produced.

6. Using these studies and other background work (e.g. a landscape study), options for residential development, hazard mitigation and funding were prepared, based on the assumption that protection would be provided further up the slope. These were presented to a Council seminar on 15 May 2007. The options were:

   - Option 1 - No further development in the Deferred LHA zone other than what is permitted in the underlying zoning of Rural 7.
   - Option 2 - Limiting development to the low hazard area on the lower, gentler slopes.
   - Option 3 - Permitting development within both the low (gentle slopes) and minor (steeper slopes) hazard areas at a higher density than LHA.
   - Option 4 - Development within low (gentle slopes) and minor (steeper) hazard areas at a lower density than Option 3.

7. The hazard areas and options are mapped in Attachment 2, and a comparison made covering a range of variables in Attachment 3. This analysis has excluded the upper moderate and high hazard areas from analysis as a development option, because of the much steeper slopes and increased hazard risk, mainly from erosion and rockfall. These areas are considered unsuitable for development.

8. The consensus emerging from the Council seminar on 15 May 2007 was that Option 2 was the preferred option for development involving a higher density than LHA, contained entirely within the lowest risk hazard area, and on the more gentle slopes. Bunding (an earth barrier) has been identified by the consultant as the most appropriate method of ensuring rockfall into the low hazard area does not cause significant property damage. Consequently, the extent of mitigation works and their costs for Option 2 are significantly less than development Options 3 and 4. Option 1, to revert to Rural 7, has been included for completeness. However, based on current information, this option is unrealistic given the expectations which have been created by the Consent Order. If further information suggests that a comprehensive living zone is not feasible, then at some future date the appropriateness of the Deferred Living zone could be reconsidered through appropriate Resource Management Act 1991 (RMA) processes.

9. The costs of hazard mitigation works reduce by approximately half for the less steep areas. Mitigation structures constructed on the upper slopes have been costed at around $1 million + GST, reducing to around $500,000 + GST on the lower slopes. The likely costs for a projected 100 households therefore equates to around $5,000 per lot. This minimises the financial risk to Council if unforeseen circumstances arise where it, rather than a developer, ends up funding the work and having to recover costs through financial contributions.

10. From a geotechnical perspective development is possible further up the slope into the 'minor hazard area', but a future developer will need to meet the costs of any additional mitigation and servicing requirements. Development is unlikely to be approved under Section 106 of the RMA without hazard mitigation in place. The area above the minor hazard zone is likely to remain unattractive for development on a cost/benefit basis and may therefore remain undeveloped. There is no onus on the Council to acquire this land but this is a matter for further consideration following consultation with stakeholders.

1 Cont'd

Density and Reverse Sensitivity

11. Housing density is an issue closely associated with development options in the hazard areas. Density is affected by topography, Living Hills A (LHA) zoning rules, the location of hazard mitigation structures, and local amenity concerns. The LHA zone description allows for some flexibility in the way rules in the area are applied in order to achieve the outcome of a semi-rural character. Compatibility with the existing living environment is an important consideration, suggesting that the character should be more or less consistent with the pattern that exists elsewhere in the Heathcote Valley. Future development needs to be set back from transmission lines and the Aromaunga Flowers site.

12. Densities were discussed at length at the May 2007 seminar and the prevailing view was that 'higher densities' should be promoted along the Bridle Path Road frontage, and the overall density should be consistent with the Greater Christchurch Urban Development Strategy. Earlier landscape and urban design assessments for the area, although not specifically addressing these options, suggest that higher density is inappropriate on the upper slopes and that buildings should be kept on the lower valley slopes, reinforcing (to some extent) the Councillors' views.

13. The options set out in Attachment 3 are possibilities for development and hazard mitigation provided for comparison. For example with an overall density of around 15 households per hectare in Option 2, the number of lots may be similar to Option 4 but the latter option's lower density is spread over a greater area. Development in Option 4 would require more substantial and costly hazard mitigation structures. Although Option 2 could theoretically provide around 135 households, this has been assessed more realistically at around 100 households. Development potential will be constrained by, for example, topography, space for the required link/connecting road (servicing new lots) and waterway corridor, set backs from transmission lines, provision of a local reserve and the location of the hazard mitigation structure.

Access and Stormwater

14. A requirement for a connecting road, from Morgans Valley Road and the subdivision to the south through to Bridle Path Road north of Martindales Road, is designed to provide connectivity with adjoining areas. A new waterway is currently being planned along the alignment of the proposed road as part of a comprehensive stormwater upgrade for the whole of the Heathcote Valley. This upgrade is already committed and being implemented, with land purchase for the waterway corridor currently being negotiated. This waterway upgrade will be carried out irrespective of whether or not the Area Plan is adopted and will be sized and routed to provide for much of the new area.

15. In summary, Option 2 is regarded as being the most appropriate development scenario for consultation, taking into account all of the above matters. Development will be subject to a comprehensive plan which will integrate staging and timing of development with hazard mitigation and servicing. Development may be able to be staged in two parts, with the southern part proceeding as Stage 1 in a south to north direction between Morgans Valley Road and the northern boundary of No 112 Bridle Path Road. The Draft Area Plan acknowledges that variants of Options 3 and 4 may be achievable following a comprehensive Section 32 assessment under the RMA, and provided that the Council is satisfied over matters to do with legal liability and financial risk.

Draft Area Plan

16. The purpose of an Area Plan is to facilitate integrated land use planning. These plans assist in the coordinated planning of Council managed services, enable the Council to anticipate and budget for infrastructure, provide a framework for development contribution assessments, and identify areas where land needs to be acquired.

1 Cont'd

17. An Area Plan also provides a basis for a subsequent Plan Change to the Christchurch City Plan incorporating, amongst other things, a comprehensive plan for a specific area. The process for preparing the Area Plan provides confidence that the development is feasible, the area is able to be serviced, and good quality development can be achieved. However, details need to be resolved through the Plan Change process particularly in the preparation of City Plan rules.

18. The Bridle Path Road Area Plan will facilitate the comprehensive and integrated planning for the deferred Living Hills A (LHA) zone. A possible development proposal based on the preferred option 2 is identified in the draft Outline Development Plan in Attachment 4.

19. As a draft Area Plan, it is acknowledged that there are still outstanding matters that need finalising, including thorough consultation with affected parties and the public before the Plan Change process commences. The benefits of this consultation is to gain general consensus and as much resolution as possible on the issues prior to statutory time frames commencing. A consultation plan has been prepared and proposes the following steps:

    - Letter and copy of draft Area Plan sent to directly affected parties and residents association.
    - Copy of draft Area Plan available via usual Council channels: Services Centres, Website, Have your Say.
    - Meeting involving directly affected parties and Heathcote Valley Community Association.
    - Summary report on the consultation feedback.

FINANCIAL IMPLICATIONS

20. Attachment 5 sets out the options for funding the hazard mitigation work. The preferred option is that landowners or future developers will be responsible for funding of works needed to mitigate the rockfall hazard for any future development. On the basis of the geotechnical advice received, it is essential that mitigation is in place prior to subdivision and development approval. Although mitigation construction is a prerequisite to development, this may be staged in two parts – the southern part and the northern part, both subject to on-site assessment.

21. There is a risk that the costs to developers could prove too onerous, or there could be difficulties in getting consent from each of the landowners on whose land the hazard mitigation works will be located. In these situations the Council may be asked at some future date to fund some or all of the work and recoup its costs through financial contributions The cost of mitigating these adverse effects on the environment is potentially recoverable from developers via financial contributions under the RMA, imposed as conditions of consent. A Plan Change would be required to the City Plan, as no provision for such financial contributions currently exists for this area. This expenditure would also have to be provided for in the LTCCP, which may lead to delays in getting the development underway.

22. Constructing rockfall mitigation for the benefit of a highly localised area is not a project that is compatible with the Development Contributions Policy adopted by the Council. Moreover, it is not appropriate to recover the cost of such measures via development contributions under the Local Government Act 2002 (LGA), as these are limited to the cost of providing network and community infrastructural services and facilities such as reserves, water supply, wastewater, surface water, transport and leisure facilities.

23. Ongoing costs associated with maintenance and repairing damage from falling rocks cannot realistically be passed on to future landowners. Past Council experience is that landowners are not diligent in voluntarily maintaining such structures and cleaning out the trough/drain uphill of the bund barrier. With the probability of a rock reaching the developed area estimated at one per year, these costs should not be significant, but some budget for Council maintenance will be required unless a different approach is taken i.e. putting the onus on adjoining land owners to maintain the structure.

1 Cont'd

24. Stormwater disposal is a major infrastructure cost in the Bridle Path area, but there is already provision in the Capital Works Program for an integrated drainage scheme for the Heathcote Valley. Over half the drainage scheme has already been implemented, with the principle works so far being carried out within the Heathcote Valley floodplain.

25. Funding for the scheme will now come via Development Contributions from a 'wider' pool throughout the Heathcote Catchment, which includes the subject land once that development proceeds. Annual funding for the ongoing projects that are still to be completed within the scheme will continue to come from the Transport and Greenspace Unit budget. Adoption of the Bridle Path Road Area Plan will result in future revenue from Development Contributions to help offset costs for which the Council is already committed.

26. The link between the south boundary of the Area Plan area and Morgans Valley Road has been purchased and the formation of this link, together with the internal road, will also need to be a developer responsibility.

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

27. Currently there are no anticipated changes needed to the LTCCP other than likely provision for some operational funding for maintenance of hazard mitigation works. Adopting this Area Plan (refer to the Council report on Bridle Path Road Area Plan), will result in future revenue from Development Contributions to help offset costs for which the Council is already committed.

LEGAL CONSIDERATIONS

Have you considered the Legal Implications of the Issue Under Consideration?

Preferred Development Option

There are three key legal issues:

1) Whether the Council is liable for damages due to a rock falling from Council-owned land above the proposed development;
2) Whether the Council is liable for costs in mitigating this hazard in the context of future development; and
3) Whether the Council is liable to compensate land owners for "lost" development rights if a dispute arises over the costs or responsibilities of installing mitigation measures.

Is the Council liable for damages due to a rock falling from Council owned land above the development?

28. The Christchurch City Council has previously been found liable in Court actions based on negligence where rock fall in the Port Hills area has caused damage to property and the Council did not provide adequate advice to the landowners on the existence of the rock fall hazard[1]. It should be noted that in the Grasmueck case, the Court awarded damages on the basis that the Council had a duty to disclose to the landowners the information it held about the rock fall hazard. The Court found that the Council was negligent in meeting that duty because it did not provide the advice in an accurate and adequate form. Provided the Council places adequate and accurate information in Land Information Memorandum (LIM) reports, registers a notice against the title in terms of the Building Act 2004 and notes the existence of the natural hazard in the policies and objectives of any Plan Change made, it is unlikely a Court would find the Council liable for damages on the grounds of negligent advice as the Council will have fulfilled its duty to provide adequate advice.

[1] (*Grasmueck* v *Christchurch City Council*, Judge Green, DC 6253/92)

1 Cont'd

29. A landowner could also bring a claim based on nuisance against the Council, on the basis that the rock fall event has interrupted their enjoyment of their land. In New Zealand, Councils to date have been generally successful in defending themselves against such claims, particularly where, as in this case, the location, nature, scale or effect of a rockfall event is unpredictable, and is therefore an unforeseeable event.

Is the Council liable for costs in mitigating this hazard in the context of future development[2]?

30 There is an argument available to developers that the Council should be required to meet the full cost of installing the rockfall hazard mitigation as the Council owns the land from which the hazard originates.

31. The Resource Management Act 1991 does not create any legal duty to prevent the occurrence of a natural hazard[3]. The emphasis within the Act is to avoid, remedy or mitigate the effects of a natural hazard. The need to mitigate that hazard by protecting future residents of the area arises from the increase in the scale and intensity of residential activity. As the effects of the natural hazard occur on the land which is to be developed, there is a reasonable argument that it is the developer's responsibility (not the Council's obligation) to provide the necessary mitigation.

32. Further, based on the geotechnical advice received, there is a logical connection and a causal nexus between increased residential development arising from subdivision activity and the requirement for mitigation from the rockfall hazard. This broad principle was recently applied by the Supreme Court[4] and it is a principle that is now binding on the Environment Court in future cases. There are reasonable arguments that the Council can rely on this principle to require a developer to install the mitigation barrier, either by inserting a rule in the district plan, or alternatively by imposing a condition of consent requiring such works to be performed. It is therefore likely the Court could defend any legal challenge to the requirement for a developer to install rockfall hazard mitigation measures.

Is the Council liable to compensate land owners for "lost" development rights if a dispute arises over the costs or responsibilities of installing mitigation measures?

33. In general terms, the Council is not liable for compensation should development not proceed or be delayed. Furthermore, no compensation is payable in circumstances where as a result of controls imposed by a District Plan a developer's or landowner's interests are affected[5]. The Council is performing a statutory function and achieving the purpose of the RMA. It is not required to compensate parties for consequences of decisions made in the performance of a statutory function and the principles of administrative law were adhered to in the decision making process. In addition, for any such claim for compensation to be successful it will be necessary for a person to demonstrate an actual financial loss caused by such restrictions, rather than a mere lost opportunity. Given that landowners have not had an actual right to develop land in accordance with the proposed Area Plan; it will be very difficult for a landowner to prove the existence of such a right and any losses which accrue.

---

[2] Note: The focus of the legal advice provided is for the purpose of assessing the Council's liability for future development. This advice should not be relied on as an accurate statement of law as to the Council's exposure to liability for properties that already exist in this area. If that topic was of interest to Councillors, it would be necessary for advice to be provided in a separate report to the Council.

[3] *Canterbury Regional Council v Christchurch City Council* (HC) [1995] NZRMA 452.

[4] *Waitakere City Council* v *Estate Homes* [2006] NZSC 22

[5] Section 85, Resource Management Act 1991

1 Cont'd

34. However, it should be noted the Council may be in a situation where the landowners have a legitimate expectation to develop their properties. Such a claim is only available on a judicial review of the Council's decisions (or lack of decision). Broadly speaking, provided the Council can demonstrate that its decisions are reasonable and that progress continues to be made in finalising the proposed zone provisions, it is unlikely that a claim for compensation of this nature would be successful.

Other matters:

35. If the preferred Option 2 for developing the lower slopes is adopted, then mitigation would be constructed on private land approximately along the low hazard line, as a bund, and would consequently be less expensive than fencing and planting on the higher slopes. This would result in some practical difficulties with the construction of the hazard mitigation, as each landowner would be required to give their consent for the rockfall mitigation barrier to be constructed. If one landowner did not provide consent, the barrier could only be partially constructed and would not provide effective mitigation. It is feasible for the developer to enter into side agreements to encourage landowners to give their consent or to purchase a portion of land for the erection of the mitigation. However, this practical difficulty may result in constraining the immediacy of actual development occurring on the site while such negotiations are concluded.

36. Resolving the finer details of this practical issue can be deferred until the Plan Change process, where it will be necessary to craft appropriate rules to ensure that the construction of the mitigation barrier by developers is contiguous with increasing the residential activity in this area. However, the law is not well developed on this point and care will need to be taken to address the precise wording of the proposed rules, or wording of consent conditions to ensure that they are valid, binding and reasonably capable of being defended if litigation should eventuate.

37. For completeness, it should also be noted that existing landowners may have grounds to apply for an enforcement order requiring the Council to construct hazard mitigation to protect the existing homes. However, it would be necessary for the landowners to have strong evidence that there was a real and substantial risk of a rock fall event occurring in the immediate future which would have an adverse effect on the environment. The Council's geotechnical advice to date would not support the Court granting orders requiring the Council to install mitigation. On that basis, it is considered that the landowners would not succeed if such an application was made.

38. The Area Plan is a non statutory document. However much of its implementation will have statutory effect through the City Plan via the Plan Change process.

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

39. The draft Area Plan will assist in achieving a number of Community Outcomes and Council Strategic Directions under the LTCCP, in particular those concerning planning for the future growth of the City. In particular:

A safe city, where risks from hazards are managed and mitigated.
An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

1 Cont'd

40. The waterway corridor and waterway formation works for this area are consistent with the adopted drainage scheme for the Heathcote Valley. The works are also necessary to meet Environment Canterbury's expected requirements for the renewal/replacement of the existing discharge consent for Morgans Valley. A catchment wide consent application is planned for 2008 which will supersede the Morgans Valley consent.

41. No provision has been made for any potential cost of hazard mitigation works and/or land acquisition to accommodate such works. It is anticipated a Plan Change will be notified during the 2008 calendar year and provision for any potential costs arising from City Plan rules can be accommodated in the 2009-2019 LTCCP.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

42. The relevant Council strategies are as follows:

- Greater Christchurch Urban Development Strategy (UDS) - Bridle Path Road Area Plan is within the proposed urban limits delineated in Proposed Change 1 to the Regional Policy Statement (RPS). Residential development in this area is compatible with both the UDS and the RPS.

- City Plan – the Area Plan achieves a number of City Plan objectives and polices in relation to urban growth, diversity of living environments, rural amenity values, environmental effects, subdivision and development, natural features, amenity value, significant trees, roading and access, water supply, sewage disposal, financial contributions, and the natural environment.

- Heathcote River Floodplain Management Strategy – one of the main underlying objectives of this Strategy is to improve the functioning of the Heathcote River by reducing peak flood levels as a result of upgrades to the stormwater system.

- Waterways and Wetlands Natural Asset Management Strategy 1999 - Heathcote Valley lies within the 'Project Area 1A' Port Hills. A new waterway corridor will add to the linkage between the Port Hills, Morgans Valley, and the stormwater retention ponds/waterways and wetlands restoration on the valley floor.

43. Amongst other strategies, the Area Plan will ensure the creation of linkages such as cycleways, and walkways to the Port Hills, to surrounding neighbourhoods and other green spaces, using (where possible) waterway corridors within the Area Plan.

CONSULTATION FULFILMENT

44. Council staff have maintained regular contact with landowners by letter, public meetings and telephone calls. The most recent meeting with landowners to discuss development options was held on 10 May 2007 and a Council seminar on this matter was held on 15 May 2007. Reports were subsequently presented to the Hagley-Ferrymead Community Board on 30 January 2008. In the Council seminar, the matter of higher densities to be consistent with the Greater Christchurch UDS, was raised. However, this has not been discussed with landowners and that will happen when the draft Area Plan is released for public comment. Most of the issues are matters that need to be resolved directly with landowners and there has been no formal or ongoing consultation with other stakeholders including the Heathcote Valley Community Association since the consent order was signed. It would have been inappropriate to involve the wider community at this stage. Mahaanui Kurataiao Ltd (MKT) has informed the Rapaki Runanga of the existence of the Plan and we are awaiting advice on what consultation, if any, is required.

1 Cont'd

45. Once adopted by the Council the draft Area Plan made available for public consultation with landowners and the wider community, particularly the Community Association. A communication plan will be developed in consultation with the Community Engagement Team that is likely to involve the following steps:

- Letter and copy of draft Area Plan sent to directly affected parties and Community Association.
- Copy of draft Area Plan available via usual Council channels: Services Centres, Website, Have your Say.
- Meeting involving directly affected parties and Community Association.
- Summary report on the consultation feedback.

46. This process should be effective in clarifying any issues regarding the Area Plan prior to the statutory timeframes imposed by the subsequent Plan Change process.

STAFF RECOMMENDATION

47. It is recommended that the Council adopts:

1. Development Option 2 as the preferred development option, incorporating the following key features, to be included in the draft Area Plan for public consultation as follows:

   (a) Development is limited to the area referred to as the low hazard area in Attachment 2.
   (b) The number of dwellings to be approximately 100 at Living 1 and/or Living Hills zone density.
   (c) Implementation methods to ensure development occurs in an integrated manner and in accordance with a Development and Staging Plan.
   (d) These features, and others as appropriate, to be given effect through rules in the subsequent Plan Change.

2. The Bridle Path Road Draft Area Plan for public consultation.

COMMITTEE RECOMMENDATION

It is recommended that the Council adopts:

1. Development Option 2 as the preferred development option, incorporating the following key features, to be included in the draft Area Plan for public consultation as follows:

   (a) Development is limited to the area referred to as the low hazard area in Attachment 2.

   (b) The number of dwellings to be approximately 100 at Living 1 and/or Living Hills zone density.

   (c) Implementation methods to ensure development occurs in an integrated manner and in accordance with a Development and Staging Plan.

2. The Bridle Path Road Draft Area Plan for public consultation.

3. That the result of the consultation and any amendments to the Bridle Path Road Area Plan be reported back to the Regulatory and Planning Committee in the first instances, prior to its consideration by the Council for adoption.

1 Cont'd

BACKGROUND

Introduction

48 This report, and the need for a decision on a preferred option for development, arose from a Council seminar on 15 May 2007 on the Bridle Path Road Area Plan, Deferred Living Hills A (LHA) zone, in the Heathcote Valley. The purpose of that seminar was to provide an understanding of the issues, priorities and implementation process; to seek feedback prior to finalising the draft Area Plan; and to ultimately progress a Plan Change to the City Plan to uplift the deferred notation for this zone.

49. The need for an Area Plan and consequently this decision, arose from submissions on the Proposed City Plan (notified in 1995), seeking to rezone the horticultural sub zone in Heathcote Valley for housing. The Council rejected those submissions and rezoned the area Rural 7.

50. Those residents making submissions lodged a reference to the Environment Court against the Council decision. Following negotiations between those referrers and the Council, a Consent Order (a negotiated agreement) was signed in the Environment Court recording the area zoned Rural 7 in Heathcote Valley be rezoned deferred Living Hills A. This signalled the intention to allow residential development once the issues were resolved.

51 The Bridle Path Road Area Plan has been prepared to assist implementation of the Consent Order, promote a comprehensive development plan addressing key issues, and to outline the scope of a Plan Change which will remove the deferred status to enable the land to become available for subdivision.

52. The Living Hills A zone includes areas where there is an existing residential settlement having a predominantly low density or semi rural character. Development Options 2 and 3 in this report suggest alternatives to this density and if either one is adopted, an alternative zoning may need to be considered.

53. The draft Area Plan is intended to provide a carefully researched and positive resource management framework to assist in promoting sustainable management, while accepting that an unavoidable presence of a natural hazard (and its consequent risks) exists.

Major Issues

54. The Consent Order listed a number of issues to be addressed prior to the deferment being removed. In particular, the issues requiring Council resolution were land stability, hazard mitigation, and the related issues of building density (lot areas, urban design and landscape).

55. Two geotechnical reports were commissioned by the Council. The first, a geotechnical hazard assessment, identified active natural processes and established hazard areas creating levels of hazard associated with these active processes. These hazard areas, identified in Attachment 2, are indicative, providing guidance on determining areas more suitable for residential development and densities.

56. The low hazard area (9.41 ha), corresponding to Option 2, is more or less along the lower, gentler slopes fronting Bridle Path Road. No significant geotechnical constraints for residential development are known and, with bunding in place, the likelihood of rocks rolling into this area and causing significant property damage has been assessed as negligible. As the slope angles progressively reduce south across the deferred LHA zone, the bunds may potentially move upslope, thereby creating more space for safe residential development in that area. According to the consultant's report, there would be no need to remove larger boulders on high rock strewn slopes of the Conservation 1 zone.

1 Cont'd

57. The minor hazard area (4.73 ha) has constraints that are generally erosion related, as well as a higher risk from rock fall. Geotechnical evidence suggests specific geotechnical investigation is required although residential development is possible. Without hazard mitigation, rocks are more likely to enter this area than in the low hazard area.

58. The moderate hazard area (6.27 ha) is located on the upper slope and steeper sites than the low and minor hazard areas. General erosion and rockfall hazard here requires detailed specific investigation, such that only isolated areas are suitable for residential development.

59. The high hazard area (0.07 ha) is on the higher, steeper slopes of hillside, generally outside the Rural 7 deferred LHA Zone. This area includes greater hazards from rockfall, landslides and erosion, making this area generally unsuitable for residential development.

60 While the first geotechnical report provided some guidance on how zoning densities may be approached, it was not considered detailed enough for the location and implementation of mitigation works. Consequently a second geotechnical report was commissioned, aimed at identifying in more detail the nature and distribution of geotechnical hazards in and above the deferred LHA zone, with particular emphasis on mitigation options and strategies that might best achieve appropriate outcomes for the deferred LHA zone.

61. In the course of investigating the matters that were the subject of the Environment Court Consent Order, a detailed subdivision plan was prepared for the Council. Its purpose was to determine the feasibility of development, to identify practicable house sites, and to identify where further site assessment might be required while addressing the other issues raised in the Consent Order. This plan produced Option 4 in Attachment 3.

62. Other matters also need to be considered when choosing a development option. Amenity issues are important, particularly in a semi-rural environment like the Heathcote Valley and, together with topography, will affect the density at which development is permitted to occur. In essence, there needs to be a balance between density, amenity and the economies of scale needed in order to generate a financially viable development.

63. The Living Hills A zone includes a range of areas where there is existing residential settlement that has a predominantly low density or semi rural character. The zone would appear to recognise flexibility in development patterns for particular locations. Therefore a higher density over a smaller area could be appropriate for Bridle Path in terms of the zone description. Density may not necessarily be as much a determinant of maintaining visual amenity as a good comprehensive subdivision design.

***Stormwater*:**

64. A catchment plan for surface water management within Heathcote Valley has already been adopted by the Council and has been steadily implemented over the last 6-7 years. Along with other significant works in the Heathcote Valley floodplain, that plan proposes the upgrading and diversion of the Heathcote Valley Drain, from its current alignment within the Morgans Valley development, across the Area Plan area, to connect into an upgraded waterway within Cooks Lane. With the adoption of the Development Contributions Policy, future contributions will now come from a wider 'pool' throughout the greater Heathcote catchment (as well as from the Bridle Path Road area) once development proceeds. Annual funding for the ongoing projects still to be completed within the scheme will continue from the Transport and Greenspace budget.

***Roading, Connections and Access*:**

65. Integrated development and road user safety are also integral to achieving a comprehensive plan sought through the Consent Order. Morgans Valley and the Bridle Path Road Area Plan are intended to be linked to provide connectivity for vehicles, pedestrians and cyclists. The link road which will achieve this, as well as other roading networks required to service the future subdivision, will be the responsibility of landowners/developers.

1 Cont'd

66. It is desirable that the proposed link road be developed sequentially from Morgans Valley and Morgans Valley Road through to Bridle Path Road. This aims to achieve good development and is a requirement of the Consent Order. To safeguard its efficiency as a Minor Arterial Road, multiple accesses to Bridle Path Road are to be avoided. This can only be achieved through a binding development plan.

Open Space and Recreation Links:

67. The future of the undeveloped land in the minor, moderate and high hazard areas will require further analysis and assessment of options. The undeveloped upper slopes (moderate hazard area) may be taken in their entirety or in part as reserve contribution, or acquired by the Council through a sale and purchase agreement. The use of the Strategic Land Purchase Fund (if Council agrees) or environmental compensation may be other ways to acquire this land. The undeveloped minor hazard area could also be acquired by the Council or be attached to lots in the low hazard area, to be maintained by landowners but with no building permitted. Experience does show however, that parts of lots excluded from building are not always well maintained by landowners. This is particularly significant as this land is likely to contain the bunding which requires ongoing maintenance.

68 Where the Council becomes owner of land unsuitable for development, that land could be combined with the Conservation 1 zone and the Port Hills recreation area for public use and pedestrian access to the Port Hills. The upper slopes might also be planted to provide further mitigation as well as amenity. However, there may be difficulties as the upper slopes become steeper. Availability of water and maintaining planting has historically been difficult and fire risk would need to be managed.

69. A decision on this matter needs a comprehensive assessment of the costs and benefits at the time of the plan change or subdivision process.

***Comprehensive Development and Integration with the Adjoining Morgans Valley Subdivision*:**

70. Although this area is quite small at around 20 ha, the Consent Order recognised the success of development would benefit from a comprehensive plan and integrated infrastructure requirements. Council staff have extended this concept by creating a linkage with the adjoining subdivision to the south in Morgans Valley, mentioned under paragraph 59 above.

71. It would be preferable for at least two reasons for development to be staged from the south. Firstly, the waterway will be constructed from that direction, and the road can follow, incorporating the link with Morgans Valley. Secondly, a two stage implementation plan will enable the hazard mitigation to be broken down into two stages, thereby reducing up-front costs.

THE OBJECTIVES

72. The objectives are to meet the terms of the Consent order and facilitate a comprehensive development that achieves the objectives and policies of the City Plan and the purpose of the Resource Management Act 1991.

THE OPTIONS - SUMMARY

73. Four options have been considered for hazard mitigation and subsequent development. In addition to hazard mitigation, consideration has been given to the terms of the Consent Order, City Plan provisions, the Port Hills environment and landscape, existing overhead transmission lines, and infrastructure requirements particularly for stormwater management.

1 Cont'd

74. Option 1 – maintain the existing level of development at 13 houses and do not rezone land to Living Hills A (or any form of residential zoning). Hazard mitigation may still be required as there is a 1% probability of rocks falling into this area. Any mitigation is the responsibility of the landowner. On present information Option 1 is unlikely to meet the tests under Section 32 of the RMA. Both the Consent Order and geotechnical reports suggest some form of development is acceptable and adverse effects can be mitigated.

75. Option 2 – rezone and develop the low hazard area only to a density higher than currently anticipated by the LHA Zone. The cost of rockfall hazard mitigation is approximately $500,000 + GST to be paid for by the developer. With the likely maximum development potential being approximately 100 households (having regard to UDS preferred Greenfield densities) the approximate cost per lot would be around $5,000.

76. Option 3 – rezone and develop both the minor and low hazard areas (excluding the moderate and high hazard areas) to a density higher than currently anticipated by the LHA Zone. The total cost of rockfall hazard mitigation would be approximately $1.04 million + GST. The development potential would be up to a maximum of approximately 200 households at a similar cost per lot to Option 2. This form of development could however have a significant visual impact.

77. Option 4 – rezone and develop both the minor and low hazard areas (excluding the moderate and high hazard areas) to a lower density than currently anticipated by the LHA Zone. To ensure Consent Order matters could be met, and site limitations taken into account, a draft survey plan was prepared for the site. The aim was to achieve an LH density closer to Bridle Path Road and more towards an LHA density as the slope increased. This option achieved 116 lots, ranging in area between approximately 700 m^2 -1900 m^2. The cost of rockfall hazard mitigation would be the same as for Option 3.

THE PREFERRED OPTION

78. Option 2 limits development to below the low hazard line on the more gentle slopes which are subject to less severe rock roll and rockfall hazard. Consequently mitigation by bund construction is significantly less expensive than Options 3 and 4. More lots could be provided for by allowing a higher density than usually anticipated in LHA zones. This would provide a similar development potential as Option 4 which the landowners might have an expectation in achieving. However, Option 2 only requires bunding as mitigation and does not require more elaborate and expensive mitigation measures. Option 2 is also preferred to Option 3 which is likely to be unacceptable to the community because of its visual impact and expensive mitigation measures.

ASSESSMENT OF OPTIONS

Option 2 Preferred option

79. Allows for higher density development than otherwise provided for under the LHA zone, limited to below the low hazard line with a bund as rockfall mitigation at the developers responsibility and cost.

1 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	Higher than LHA density provides more households within the city, increases housing supply and may contribute to a more cohesive community in Heathcote Valley and make schools, businesses etc more viable.	Development costs for landowners and potential landowners may be higher (eg foundations). Amount of development less than that on flat land with medium density development, given infrastructure requirements eg waterway, link road.
Cultural	.	Improved facilities may be required. Some facilities running at capacity eg St Mary's Church Hall.
Environmental	Site surrounded by varying residential development densities. Therefore higher density may not appear visually inconsistent. Less hazard mitigation work required. Bunding only required as opposed to fencing and planting as less probability of rockfall in this area, and rock fall slows further down slope. Balance land for visual, amenity and possible recreation purposes. Development kept off upper slopes, as more difficult to develop.	Development kept on the lower slopes thereby reducing opportunities for views. Less opportunity for open space and amenity within subdivision although compensated for by upper slopes being kept free from development.
Economic	Cost of hazard mitigation approximately half that of other development options - three and four, although the cost per household not significantly different from other options.	Some operational costs for ongoing maintenance of mitigation works.

Extent to which community outcomes are achieved:
This option will contribute, in particular, to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
This option will increase the funding base for the Heathcote Valley drainage scheme with no significant increase in the scheme's cost and bring about a scheme to better manage and mitigate the risk of flooding in the Heathcote Valley; management of rockfall hazard from Council land.

Primary alignment with Community Outcome, City Development, City Plan Urban Growth Objective 6.1.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways.

No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has areas of known archaeological association.

Consistency with existing Council policies:
Option specifically consistent with relevant Council policies**:**

- Greater Christchurch Urban Development Strategy - takes into account development options for Greenfield development areas and Proposed Change No.1 to the Regional Policy Statement.
- Development Contributions Policy, in relation to providing reserves and network infrastructure to service growth.

Views and preferences of persons affected or likely to have an interest:
Landowners have been regularly consulted by letter, newsletter, telephone and pubic meetings, most recently on 10 May 2007 particularly in regard to Option 4. It would not have been appropriate to consult the wider community while discussions on what were primarily site specific issues were being conducted with landowners. Option 2 was raised at the Council seminar on 15 May 2007, but has not been specifically presented to landowners. This option will be made available to landowners and the wider community when the draft Area Plan is made available for public comment.

Other relevant matters:
Purchase or vesting land for mitigation works, undeveloped land on upper slopes as reserve.

1 Cont'd

Option 1 - Maintain the Status Quo (if not preferred option)

80. No further development in the deferred LHA zone. Maintain existing 13 dwellings.

	Benefits (current and future)	**Costs (current and future)**
Social	Lifestyle choice retained	Landowner expectations and Environment Court Consent Order conditions not met. Housing need of city not assisted in being met.
Cultural	None	None
Environmental	More visual open space on Port Hills, though in private use.	No direct costs.
Economic	Nothing specific	Land not effectively or efficiently used. Work such as waterway already planned and budgeted for. Lower rating base to recover costs from.

Extent to which community outcomes are achieved:
This option will contribute less than Option 2 to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
This option will increase the Council's share of the Heathcote Valley Drainage Scheme as there will be fewer Development Contributions.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways.

No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has sites of known archaeological association.

Consistency with existing Council policies:
Inconsistent with Greater Christchurch UDS, City Plan Urban Growth Objective 6.1, UDS and RPS Proposed Plan Change No. 1 in particular.

Views and preferences of persons affected or likely to have an interest:
Landowners/developers unlikely to support this option due to expectation for development through Consent Order and subsequent discussions by the Council with landowners. Landowners are likely to suffer a loss of public confidence in the planning process provided by the Council.

Other relevant matters:
Purchase or vest undeveloped land on upper slopes as reserve.

1 Cont'd

Option 3

81. Development within both minor and low hazard areas at higher density than usual Living Hills densities. Rockfall hazard mitigation by fencing and planting. Cost to developers approximately $1.04 million + GST. No development in moderate or high hazard areas.

	Benefits (current and future)	**Costs (current and future)**
Social	Higher than LHA density provides more households within the city, increases housing supply and may contribute to a more cohesive community in Heathcote Valley and make schools, businesses etc more viable.	Development and hazard mitigation costs increase on steeper land.
Cultural	More people in Heathcote Valley supporting the valley's facilities.	Improved facilities may be required. Some facilities running at capacity eg St Mary's Church Hall.
Environmental		Loss of visual amenity and need for greater hazard mitigation eg higher retaining walls to protect development closer to rockfall hazard. This option has the greatest potential environmental impact
Economic	Higher development contributions for reserves and open space development on the Port Hills. Work such as waterway already planned and budgeted for and which can cope with forecast increase in households. Greater 'pool' of developments (than Options 2, 4), contributing to both the area's drainage scheme and rockfall mitigation.	Development and mitigation costs for developers higher than for Option 2, although lot yield higher than Option 4 therefore potentially lower cost per lot.

Extent to which community outcomes are achieved:
This option will contribute in part to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
Higher costs associated with development on land subject to greater risk from rockfall hazard and associated higher mitigation and ongoing maintenance costs**.**

This option will increase the funding base for the Heathcote Valley drainage scheme with no significant increase in the scheme's cost, and bring about a scheme to better manage and mitigate the risk of flooding in the Heathcote Valley; management of rockfall hazard from Council land.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways. No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has sites of known archaeological association.

Consistency with existing Council policies:
Supports the Council's City Plan Urban Growth Objective 6.1, the growth strategy for the Greater Christchurch Urban Development Strategy, and, the Proposed Change No 1 to the Regional Policy Statement.

Option more specifically consistent with relevant Council policies**:**

- Development Contributions Policy, in relation to providing reserves and network infrastructure to service growth.

Views and preferences of persons affected or likely to have an interest:
Landowners, potential developers and the wider community have not had this proposition of higher density presented to them. Likely to give some landowners a greater advantage than others, as the benefits of high density development will not be spread evenly across all landowners.

Other relevant matters:
Purchase or vest land for mitigation works, undeveloped land on upper slopes as reserve.

1 Cont'd

Option 4

82. Development within both minor and low hazard areas at lower density similar to Living Hills A zone hillslope densities. Mitigation costs of $1.04 million + GST at developers' expense.

	Benefits (current and future)	**Costs (current and future)**
Social	Higher than LHA density provides more households within the city, increases housing supply and may contribute to a more cohesive community in Heathcote Valley and make schools, businesses etc more viable.	Development and hazard mitigation costs increase on steeper land.
Cultural	More people in Heathcote Valley supporting the valley's facilities.	Less opportunity for open space and amenity within subdivision although compensated for by upper slopes being free from development. Improved facilities may be required. Some facilities running at capacity eg St Mary's Church Hall.
Environmental	Some Development Contributions for reserves and open space development on the Port Hills. Larger sections provide greater opportunity for private landscaping including larger trees.	Loss of visual amenity and need for greater hazard mitigation eg higher retaining walls to protect development closer to rockfall hazard.
Economic	Work such as waterway already planned and budgeted for. Can cope with forecast increase in development.	Development costs per lot higher than Option 2 for developers. Fewer lots than Option 3.

Extent to which community outcomes are achieved:
This option will contribute in part to the achievement of:

- A safe city, where risks from hazards are managed and mitigated.
- An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.

Impact on the Council's capacity and responsibilities:
This option will increase the funding base for the Heathcote Valley drainage scheme with no significant increase in the scheme's cost, and bring about a scheme to better manage and mitigate the risk of flooding in the Heathcote Valley; management of rockfall hazard from Council land.

Refer to legal considerations section for analysis of these responsibilities.

Effects on Maori:
The Council aims to achieve the objectives of Iwi Management Plans in relation to water discharge and quality, particularly into and from natural waterways.

No known recorded association of particular area with Ngai Tahu, although Heathcote Valley floor has sites of known archaeological association.

Consistency with existing Council policies:
Supports the Council's City Plan Urban Growth Objective 6.1, the growth strategy for the Greater Christchurch Urban Development Strategy and the proposed Change No 1 to the Proposed Regional Policy Statement.

Views and preferences of persons affected or likely to have an interest:
Landowners have been familiar with this proposition or similar for some time. It would not have been appropriate to consult the wider community while discussions on what were primarily site specific issues were being conducted with landowners.

Other relevant matters:
Purchase or vest land for mitigation works, and upper slopes as reserve.

2. APPLICATION FOR CHANGE TO CITY PLAN – 8 MANNING PLACE

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

PURPOSE OF REPORT

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

EXECUTIVE SUMMARY

2. The application is to rezone 8 Manning Place in Woolston from Living 2 to Business 1. No changes are proposed to any of the Business 1 zone standards.

3. The purpose of this report is not to consider the requested plan change on its merits. Rather, it is to recommend which of several options under the RMA is to be used in processing the application. The consideration of the merits of the application will occur after submissions have closed, if the decision on this report is to select one of the process options that lead to public notification.

4. The process options available to the Council are to accept the request as a private plan change and publicly notifying it for submissions and a hearing at the cost of the applicant, to adopt the change as the Council's own change and accept the responsibility and costs of processing it, to treat it as a resource consent application, or to reject the request due to it falling within one of the limited grounds set out in the Act. The Council is obliged to consider this request under the due process set out in the RMA.

FINANCIAL IMPLICATIONS

5. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application or decide that it should be treated as a resource consent, it is possible that the applicant would challenge this decision in the Environment Court, which would be a costly process for the Council regardless of the outcome. Costs cannot be predicted accurately, but could be in the vicinity of $20,000 for this preliminary step.

6. Should the Council accept and notify the change at the expense of the applicant there will be a no direct costs to the Council as the Council's costs would be recovered. However there would be an impost on staff time.

7. Should the Council adopt the change as its own then the Council will need to absorb all the costs, likely to run to at least $15,000.

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

8. Yes.

LEGAL CONSIDERATIONS

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

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

2 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

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

11. Yes

ALIGNMENT WITH STRATEGIES

12. Yes

Do the recommendations align with the Council's strategies?

13. Yes

CONSULTATION FULFILMENT

14. The applicant is currently in the process of undertaking public consultation with neighbours to the subject site in 8 Manning Place, Woolston. The results of that consultation are still to be reported to Council. Statutory Council process will apply at later stages if the plan change is accepted for public notification.

STAFF RECOMMENDATION

It is recommended that the Community Board recommends to the Planning & Regulatory Committee to:

(a) Agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.

HAGLEY/FERRYMEAD COMMUNITY BOARD RECOMMENDATION

The Board considered a report regarding an application to the Council for a change to the City Plan and recommending a process for dealing with the application in terms of the provisions of the Resource Management Act 1991 at its meeting on 20 February 2008.

The Board resolved to recommend to the Regulatory and Planning Committee that the Council agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.

COMMITTEE RECOMMENDATION

It is recommended to the Council:

(a) That the Council agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.

(b) That the cost of any plan change, be borne by the applicant.

2 Cont'd

BACKGROUND & DISCUSSION

The Application

15. The application seeks to rezone a property at 8 Manning Place in Woolston from Living 2 to Business 1. The subject site is 629m^2 and is currently occupied by a single storey dwelling, approximately 50 to 60 years old and in a relatively poor condition of repair. The application states that this dwelling is occupied on a rental basis.

16. The Living 2 Zone encompasses the inner suburban living environments of the City and principally provides for low to medium density residential accommodation. It is anticipated that there is potential for infill and redevelopment within this zone at a higher density than the Living 1 Zone.

17. The Business 1 Zone is intended to provide for local shops and services activities. Many Business 1 Zoned sites are dominated by small scale retail shops, often in a "strip" immediately adjoining the road frontage. The zone provides for local employment and convenient access to goods and services.

18. A copy of the application is attached.

RMA Timeframes

19. The application was formally received on 2 November 2007. Consultant planners from Boffa Miskell Ltd are reviewing and processing the application on behalf of the Council. Further information was requested on 27 November 2007 on traffic related matters. That further information was received on the 20 December 2007. The next step in the process is for Council to make a decision in accordance with Clause 25 of the First Schedule of the RMA whether to accept, adopt or reject the application or to treat it as if it were a resource consent. The statutory time limits require this decision to be made by 22 February 2008. Due to the timing of the Community Board, Planning and Regulatory Committee and Council meeting dates this deadline is unrealistic and an extension has been made until the 1 April 2008. The applicant is required to be notified of the Council decision within 10 days.

Description of Proposal and Site

20. The subject site is located in Manning Place, which is a local road running between Ferry Road and Wildberry Street to the south. The Manning Place / Ferry Road intersection is approximately 120m east of the major intersection of Ferry, Ensors and Aldwins Roads.

21. This section of Ferry Road is classified as a Minor Arterial Road in the City Plan, however surveys undertaken in 2006 indicate that the road volumes are more characteristic of an Arterial Road with approximately 21,115 vehicles counted. A survey in 2003 indicated that Manning Place had a daily vehicle trip count of 609.

22. The subject site is located 2 properties depth back from the Ferry Road/Manning Place intersection. It is adjoined on two sides (the north and west) by Business 1 zoned land and to the south it is adjoined by the Living 2 Zone.

23. The adjoining Business 1 zoned sites are part of a row of properties which all front Ferry Road for the entire length of the block from Hart Street to Manning Place. This shopping strip is used for a number of take-away food premises as well as a variety of retail activities e.g., Super Cheap Auto, a pharmacy and hairdresser. The adjoining Living 2 Zone to the south is occupied by a dwelling.

24. Across Manning Place the site also faces Living 2 zoned sites occupied by houses of mixed age and condition. There is a small commercial premise on the opposite (eastern) corner of Manning Place and Ferry Road (also Living 2) selling Polynesian food and products.

2 Cont'd

25. The private plan change application seeks to rezone the property from Living 2 to Business 1. The application notes that the subject site is unusual in that it is adjoined on two sides by the Business 1 Zone. The Planning Map shows that the Business 1 Zone boundary is not straight or regularised and dog-legs around 8 Manning Place. The applicant has raised concerns about the continued efficient use of the sites and reduced amenity for living purposes as a consequence of the property being adjoined predominantly by the Business 1 Zone.

26. The application does not seek to amend or add to any of the existing Business 1 Zone rules to accommodate any unusual features of the site. Accordingly, the existing provisions and controls of the Business 1 Zone would be applied to any future redevelopment or activities on the site. It is noted that the Business 1 Zone Statement acknowledges that the standards of the zone already control the effects of activities to a level that does not unduly impact on the amenities of adjoining living zones. The application therefore considers that no adverse development scenarios are created by the rezoning.

Description of Issues

27. The Section 32 assessment accompanying the application has identified a number of potential development scenarios for permitted commercial activities on the site. These include the possibility that 8 Manning Place could be redeveloped in conjunction with other sites in the Business 1 Zone to the north.

28. The traffic implications of these scenarios have been assessed. Although the traffic volumes associated with a business activity are likely to be greater than from a residential activity on the site, the overall impact on Ferry Road volumes, safety and efficiency have been assessed as minor. It is acknowledged that the City Plan already has in place a standard limiting vehicle movements to 250 per day. Any increase in traffic as a result of rezoning that exceeds this standard would trigger a resource consent, ensuring that the traffic impacts of a specific development proposal would be subject to a detailed assessment. The proposal for rezoning to a Business 1 Zone does not therefore result in any loss in the ability to address any new access arrangements or the effects of any increase in traffic volume.

29. The Section 32 assessment also identified the main differences in effects between the current Living 2 Zone standards and the Business 1 Zone. In summary, the comparison indicates that the maximum density of development likely under a Business zoning is not significantly greater than in the Living 2 Zone, taking into account the rules for setbacks, recession planes, car parking and landscape treatment. The maximum building height is 8m for both the Living 2 and Business 1 Zone, while a greater building setback from neighbours and landscape treatment are required for a building used for Business 1 activities than residential activities. A Business 1 Zone will enable a wider range of activities, however, the combined package of Business 1 Zone rules has been developed to specifically manage effects at the Business 1 – Living zone interface, reflecting the suburban setting of the Business 1 Zone.

30. The proposal for rezoning will shorten the Living/Business interface in this locality and will generate more options for efficient use of 8 Manning Place.

Processing of Private Plan Changes

31. The processing of private plan changes is set out in Clauses 21 -29 of the 1st Schedule to the RMA. In summary these provide the following:

- Clause 21 allows any person to make an application for a change to an operative district plan. The City Plan is operative.
- Clause 22 requires the request for a plan change to be made in writing with reasons and to be accompanied by an assessment of environmental effects and an assessment under Section 32 of the RMA.
- Clause 23 enables the Council to seek further information upon receiving the application (further information was requested for this application).
- Clause 24 allows the Council to modify a proposal, but only with the consent of the applicant.

2 Cont'd

- Clause 25 requires the Council to consider the request and make a decision to either
  - "accept" it and proceed to public notification, or
  - "adopt" it as if it were its own proposal, and publicly notify it, or
  - treat it as if it were a resource consent, or
  - "reject" it if it falls within one of the limited grounds specified.
- Clause 26 requires the Council to publicly notify the proposed Plan Change within 4 months.
- Clause 27 sets out the circumstances where an applicant can appeal a Council's decision to adopt, accept in part only or reject a Plan Change request.
- Clause 28 provides for the withdrawal of a request.
- Clause 29 sets out the procedures for processing of the request including the following steps: public notification, submission, further submission, hearing, decision, and appeal (if any).

OPTIONS

32. The Council's options are:

    a. Reject the application;
    b. Accept the application, proceed to publicly notify and decide the application at the expense of the applicant;
    c. Adopt the change at its own and assume the responsibility for putting it through the process outlined in the RMA including all costs; or
    d. Treat the application as a resource consent application.

    There is no status quo, i.e. do nothing option. The application must be considered and either accepted, adopted, rejected, or treated as a resource consent.

33. There are very narrow grounds in the Act for rejecting an application. In short they are that the requested change is frivolous or vexatious, that the issue has been dealt with in the last 2 years or the Plan has been operative for less than 2 years, or that it is not in accord with sound resource management practice or would make the Plan inconsistent with the purpose of the Act. The change is not frivolous or vexatious and the relevant part of the Plan has been operative for 2 years. The legal advice we have received in respect of the matters of consistency with the purpose of the Act and sound resource management practice, is that those grounds could only be used for rejecting the application if there was no, or very little, merit in considering such a change to the Plan. The advice indicates that there is a presumption in the Act in favour of accepting plan change requests and testing them through the submission and hearing process. In this case grounds have been raised in the reasons given for the change, as outlined earlier, that at least merit consideration of the change.

34. There is a significant difference between "accepting" and "adopting" the application. If the application is accepted, the Council retains its independence and is able to consider it impartially at a hearing later in the process, rather like a resource consent process. The plan change remains a private change and the entire cost of the process can be charged to the applicant. If it adopts the application, the Council would be effectively promoting the application as if it had decided to propose the change itself and the Council would be unable to charge the applicant for the costs.

35. The subject of the plan change is not a matter the Council has identified as a priority it wishes to pursue for itself. The Council has an adopted City Plan programme and this item is not on it. There is no apparent reason for the Council to adopt this plan change as its own priority.

36. The applicant is not seeking consent for one particular development but is seeking a rezoning to allow a range of potential uses of the site, therefore it would be difficult to deal with the application as a resource consent. To be able to grant such resource consent would require a set of conditions that mirrored the rules applying to the Business 1 zone, effectively re-zoning the site.

PREFERRED OPTION

37. The preferred option is Option b. - accept the application and proceed to publicly notify it. There are no reasons to reject the application. Accordingly, the application should be accepted and considered on its merits, following public notification and the hearing of submissions.

3. PROPOSED CHRISTCHURCH CITY PARKS & RESERVES BYLAW 2008

General Manager responsible:	General Manager City Environment, DDI 941-8656
Officer responsible:	Network Planning Unit Manager
Authors:	John Allen, Policy & Leasing Administrator – City Environment Group

PURPOSE OF REPORT

1. To outline the background and options relating to the review of the present Parks & Reserves bylaws that are in place and to recommend to the Council:

   (a) that there is a requirement for a new Parks and Reserves Bylaw to be made to control activities on Parks and Reserves not covered by other bylaws or acts of Parliament and,

   (b) that Council adopt the attached draft Parks and Reserves Bylaw for public consultation.

EXECUTIVE SUMMARY

2. The Local Government Act 2002 requires many of the Council's bylaws to be reviewed to determine if still necessary; they are appropriate, and they meet the purpose they were designed for. This report forms part of the review of the seven bylaws, or parts of bylaws, that are still operative. These bylaws have not been reviewed since the 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
   - Paparoa County Council General Bylaw – 1981 section 15 Reserves.

3. Officers are recommending, after carrying out an evaluation of present bylaws, that a consolidated, rationalised and modernised parks and reserves bylaw is the most appropriate way of addressing a number of potential problems relating to parks and reserves. Accordingly, a draft parks and reserve bylaw is submitted for consideration pursuant to the requirements of section 155 of the Act. The proposed Parks and Reserves Bylaw regulates the:

   - appointment of park guardians
   - closing of parks and reserves to the public
   - behaviour in reserves
   - control of protected areas
   - control of animals
   - control of the use of water
   - control of vehicles, other traffic, mechanical devices and vessels
   - prohibition of fires
   - prohibition of camping
   - control of aircraft
   - control of sports and games
   - provisions for special areas:
     - Botanic Gardens
     - Rawhiti Golf Course

3 Cont'd

4. This report outlines the options[1] for the draft new Parks and Reserves Bylaw:

   - Option one: Status quo, retain the seven bylaws
   - Option two: Revoke the seven bylaws or relevant parts of them and create a consolidated bylaw
   - Option three: Revoke the seven bylaws or relevant parts of them and create a consolidated, rationalised and modernised Parks and Reserves Bylaw.

5. The recommended option is option three. A draft bylaw (Attachment 1) has been prepared for Councillors' consideration, rationalising and modernising the seven bylaws, and amalgamating them into one single, new bylaw. This option will best meet the requirements of section 155(2) of the Local Government Act 202 (at a broad, overall level), that this bylaw, which will be in the most appropriate form.

6. The object of this Bylaw is to provide for the orderly management and control of parks and reserves vested in or under the control of the Council for the benefit and enjoyment of all users of those parks and reserves.[2]

7. 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 – 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.

   These matters are covered in more detail in the background section of this report, and in the attached clause by clause analysis.

8. A number of existing clauses in the bylaws do not meet the above tests, and they have therefore being removed. A number of clauses are duplicated in other bylaws for example the Proposed "Public Places Bylaw", "Sale of Liquor Act" or "Liquor Control Bylaw". A number of existing clauses are also redundant because of new legislation for example "Resource Management Act 1991" and "Litter Act 1979".

9. Advice from the Legal Services Unit and the Inspections and Enforcement Unit suggests that behavioural clauses are very difficult for local authorities to enforce, as the only tool available for enforcement under the particular bylaw-making powers is prosecution.[3] Taking a prosecution requires a high level of proof, which can be most difficult. The minor nature of some behavioural matters also makes the cost of taking a prosecution disproportionate to the harm being caused. A further factor is the likely age of offenders (who may have to be prosecuted through the Youth Court). Additionally, it is often difficult to establish the identity of the offender.

10. Behavioural clauses in bylaws are very difficult for local authorities to enforce. For example, the Council has not taken a prosecution under the parks and reserves behavioural clauses (which have been in parks and reserves bylaws for over two decades) for the above and other reasons, even though behavioural type issues are clearly a problem, there being over 237 requests for service (over 50% of total received) with the Call Centre over the 2 year period from 1 June 2005 to 30 June 2007. There are more effective tools available for addressing behavioural issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act 1981 and Crimes Act 1961, which the Police enforce. Legal advice confirms that the Council through its ranger service is also able to bring private prosecutions under these, and other acts.

---

[1] This is required under s.77 of the Local Government Act 2002

[2] 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(b)(iv) [regulating or protecting from damage, misuse or loss or preventing the use of] reserves, recreation grounds, or other land under the control of the local authority.

[3] Parliament has not yet introduced any infringement offences in relation to these matters.

3 Cont'd

11. In the past, rangers and officers have been successful in obtaining compliance with previous bylaws through education. Officers believe that this educational approach for dealing with transgressions should be continued in the future.

12. 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, and may divert the focus away from practical solutions to address such issues.

13. The question before Councillors is not whether an issue (for example, vehicles, other traffic and mechanical devices) is a problem; the question is whether a bylaw is an *appropriate or effective tool* for managing the issue.[4] This report suggests that there are other tools that are more appropriate than a bylaw to address matters such as, behaviour, damage, acts of cruelty against animals, littering and alcohol and substance abuse in public places. Additionally, the new parks and reserves bylaw is intended to regulate *lawful* activities. The behavioural matters are already unlawful due to their coverage under the Summary Offences and Crimes Acts.

14. If the Council adopts the attached 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.

CONSIDERATIONS PURSUANT TO SECTION 155 OF THE LOCAL GOVERNMENT ACT 2002

15. 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), in other words the Council is satisfied that a bylaw is necessary, and the perceived problems cannot be dealt with in any other manner.

16. 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.[5]

17. 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?* [6] In the following paragraphs these issues are addressed in the context of determining a need for any bylaw.[7]

---

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

[6] *The Know how Guide to the Regulatory and Enforcement Provisions of the Local Government Act 2002*, SOLGM, Local Government New Zealand, Department of Internal Affairs, no date

3 Cont'd

18. An individual review of all the bylaws[7] that the new bylaw is to replace could have been undertaken. However it was decided to investigate all issues covered in previous bylaws. A list of all possible clauses was compiled from existing bylaws, which were then subjected to the section 155 of the Local Government Act 2002 tests as elaborated upon above.[7] The clause by clause analysis is attached to this report as Attachment 2. 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.

19. In the following paragraphs the clauses are addressed in the context of determining a need for a bylaw. The requests for service from the public on bylaw matters that was sent through to the Park Ranger service to attend to was also perused for the two year period from 1 June 2005 through to 30 June 2007. Over half of this period was after the amalgamation of the Banks Peninsula District, and Christchurch City Councils, on 5 March 2006. A number of areas for which complaints have been received in the past are not represented on this list, because they where sent through to other divisions of Council, or other authorities to attend to. Information on the number of these complaints during this period is not available and in all except in one area has been removed from the bylaw because the issue is able to be dealt with in a more appropriate way using other bylaws or legislation. Legal input into this evaluation process was obtained to ensure that the reasoning behind a particular clause being retained or not, in the proposed bylaw, was sound.

20. "Appointment of Rangers and Park Guardians" The appointment of officers to enforce the provisions of this bylaw will be authorised by the Christchurch City Council General Bylaw 2008. There is no need to appoint officers/rangers for the purpose of this bylaw. The word ranger is not used in the bylaw. Rangers are appointed by the Council under section 8 of the Reserves Act 1977 for the purpose of enforcing the provisions of the act as they relate to reserves which are subject to that Act. This appointment process is able to be delegated from Council under the provisions of the Local Government Act. There is however no such provision for people that are not staff so this section has been retained in part in the bylaw. Park Guardians will have education and reporting roles only, not enforcement ones.

21. "Reserves Open to the Public" This section has been retained, because the power to close a public reserve is contained in the Reserves Act 1977 for recreation reserves only, not for other types of reserves held under this Act. Parks and reserves held under the Local Government Act 2002 can be closed under the power of general competence (s12).

22. "Vandalism" and "Misbehaviour" sections The majority of these sections have been removed from the Bylaw, the Council having powers under the Summary Offences, Crimes, Wildlife, and Animal Welfare Acts to issue warnings and bring private prosecutions under these Acts. The officer of the Council (it could be a park ranger), would be the officer in charge, and would swear the information on behalf of Council appearing in court as the main witness. The sections retained are:

    - bury or disturb anything in a reserve for parks and reserves which is held under the Local Government Act,
    - walk on prohibited areas, for example after new grass is sown under both acts,
    - bolt, drill or place any fixture, plaque or sign within a reserve for parks and reserves held under the Local Government Act.
    - leave gate in different position than that which it is found is required because of stock grazing on many Council regional parks.

[7] 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.

3 Cont'd

23. Over the two year period 237 requests for service were received for vandalism/behaviour issues, this representing over 50% of the total number of requests received by the ranger service (see Attachment 3).

24. "Control of Protected Areas" This section has been retained because although there are the powers of general competency under the Local Government Act 2002 for parks and reserves held under this Act, and for recreation reserves held under the Reserves Act 1977, this is not the case for other types of reserves.

25. "Animals" This section has been retained to enable rangers, and authorised officers to control animals other than dogs upon parks and reserves. The control of dogs on the six reserves, all of which are held under the Reserves Act 1977, situated within the Selwyn District Council area is set out in the "Legal Considerations" section 43 below. The control of dogs on Council owned, and managed and controlled park and reserve areas is adequately addressed in the proposed Dog Control Bylaw 2008. Over the 2 year period 16 requests for service were received for stock (including dogs and animals), this representing over 3% of the total number of requests received by the ranger service. The author suspects that many of the dog related requests received from the public were passed directly on to the dog rangers to address, these not being recorded with the rangers as requests for service.

26. "Control of the Use of Water" Environment Canterbury are responsible for ensuring pollution of natural bodies of water does not occur, and if pollution does occur to take legal action against the offenders. However this does not extend to artificially created lakes and ponds owned by the Council, hence the reason for including this provision in the bylaw. The water in some of the bodies of water is of a low quality not fit for human recreation purposes, because of wildfowl, therefore swimming in these bodies must be prohibited for health reasons. No requests for service were received in the two year period concerning water pollution issues by the rangers. All water quality related requests if received, are forwarded to Environment Canterbury to address.

27. "Vehicles and Other Traffic" A general provision should be retained in the bylaw about vehicles and their safe use in parks and reserves. Officers are also recommending that the relevant sections of the 'Traffic and Parking Bylaw be transferred to the 'Parks and Reserves Bylaw' because this is where the issues are most appropriate dealt with. Ninety-eight requests for service were received on vehicle and traffic related issues on parks and reserves over the two year period, this being approximately 21% of the total number of requests received by the ranger service.

28. "Prohibition of Fires" This section is being retained in the bylaw because although section 94(1)(a) of the Reserves Act applies to lighting fires on land held under that Act, it does not apply to parks and reserves held under the Local Government Act. Clause 11 (1) is also less permissive than clause 8 'Restrictions on fires in the open air' in the draft 'Fire Safety Bylaw'. Eleven requests for service were received over the 2 year period this being approximately 2.5% of the total number of requests received. More urgent requests concerning fires out of control on park and reserve land would be registered with the fire service through the 111 system.

29. "Camping" This section is being retained because a clear prohibition on camping on reserves where it is not permitted is a more effective deterrent than otherwise having to resort to the Trespass Act, one of the issues being that under this Act a warning must always be given before effective legal action can be take. Eighteen requests for service were received over the two year period, this being over 4% of the total number of requests received by the ranger service. These being in addition to all the requests received by the four camping grounds (two leased) which are located on Council parks and reserves.

30. "Aircraft" This section is being retained, because there is a need to control aircraft (the interpretation used in the bylaw is in the widest sense, which will be discussed further in the 'Legal Considerations section 45 of the report) because of the health and safety concerns for the public using parks and reserves. The two district plans (Christchurch City and Banks Peninsula) provide some control from a planning perspective; however the Council needs to be satisfied that the publics' safety is not at risk when a landing or take-off takes place from park or reserve. No offences took place over the two year period, although permission was granted for a number of landings and take-offs.

3 Cont'd

31. "Sports and Games" This section has been retained in a reduced form to ensure that organised sport is played on an appropriately marked field, and to ensure that when the sport is played other members of the public don't encroach onto the playing area. Officers are of the view that there is a need to clearly designate the dressing sheds and toilets to be used for, the author being aware of problems occurring in these three areas in the past. Nineteen requests for service in this category were received over the two year period this being approximately 4% of the requests received.

32. "Special Provisions – Botanic Gardens" This section is being retained because of the large number of people visiting the park annually. The large numbers of people at times do cause congestion problems and consequently public health and safety issues. There is also a number of very important plant collections, some of which are very rare planted in the Botanic Gardens. The inclusion of appropriate special sections in the bylaw allows appropriately authorised officers in the gardens to take immediate action to stop a transgressions without the necessity to involve the police.

33. "Special Provisions – Rawhiti Golf Course" This section is being retained in the bylaw to ensure unauthorised access to the golf course does not occur, because of public health and safety issues.

34. "Special Provisions – Foreshore" Most of this section is deleted from the bylaw as two of the three sub-sections dealt with vandalism and misbehaviour issues. Therefore they are not being included for the same reason as stated in section 21 above. The enactment of the Foreshore and Seabed Act 2004 clearly placed ownership of the foreshore in the Crown, and therefore a number of clauses in previous bylaws are now invalid. This issue is elaborated upon in the 'Legal Considerations' section of the report. The retained clause being the hauling out of a vessel onto the foreshore for laying up or wintering over purposes. Such specific action, while not covered by other bylaws or legislation, does occur. While an action may not become a nuisance to other members of the public using the foreshore, there are other issues that need to be considered such as public liability issues.

35. Consideration was given to including a new section entitled "Special Provisions – Paddling Pools" because the current Public Swimming Pools Bylaw is being revoked. It was decided to address the issues raised by the revocation of the bylaw by a combination of signs at each paddling pool indicating the expected behaviours when using the pool, this being supported where necessary, with the Trespass Act 1980.

FINANCIAL IMPLICATIONS

36. It is not anticipated that the adoption of the bylaw, as proposed, will adversely impact on enforcement demands, and in some areas may be more cost effective, because of the deletion of some clauses where activities covered by these deleted clauses are better addressed by other bylaws, or legislation.

37. There are 25 park rangers who provide ranger services to the public 365 days per year. This service is primarily provided during normal work day hours; however ranger services are extended to 24 hours a day on a call-out basis. The rangers are based at the regional parks which are located around the outside of the former city area, (Groynes, Bottle Lake, and Victoria Park).

38. Existing rangers based at the Victoria Park Ranger station are able to adequately cover issues in the Lyttelton Harbour basin (Lyttelton Mt Herbert Community Board area). There is an issue however with providing adequate ranger services on the balance of the Peninsula (Akaroa Wairewa Community Board area). This board area is the largest in the city making up approximately a third of the total area of the city. Many of the park, reserve, and foreshore areas within this area are of high ecological value with recreation and coastal facilities, and consequently have to be sensitively and properly managed. There is a need to provide a better Council staff presence in this area, as formerly there was a dedicated person employed to look after bylaw issues, including dog control, by the previous Banks Peninsula District Council.

3 Cont'd

This person left the Council's employment, and has not been replaced. A Council officer based in this area would not only look after bylaw matters (dog issues will be actioned by dog rangers), but would be available to oversee maintenance and capital programmes and other such work within regional and local parks in the area. It has been estimated that approximately one third of the officers time would be spent on bylaw (proposed Parks and Reserves, and Marine and River Facilities Bylaws monitoring, education, investigation, evidence collection, taking prosecutions, etc) and related matters, the time spent being more in the summer, and less in the winter. It has been estimated that would cost approximately $75,000 a year to base an officer in the area. This cost including the provision of a vehicle, office space, equipment, and salary. Approximately $25,000 of which would be spent on bylaw and related matters.

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

39. The budgets for the City Environment group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.

40. A request for additional budget to finance a further parks officer position to service the Akaroa Wairewa Community Board area will need to be made through the LTCCP process.

LEGAL CONSIDERATIONS

41. The following bylaws have been considered as part of this review:

- Christchurch City Council Bylaw 118 – Parks and Reserves 1981
- Christchurch City Council Bylaw 120 – Avon Heathcote Estuary and Rivers 1982
- Riccarton Borough Council Bylaw (No.1) part 8 Parks and Reserves
- Heathcote County Council Bylaw – Reserves 1933 (No.1)
- Waimairi County Council Bylaw (No.1) – 1966 part vii Reserves and Domains
- Paparoa County Council General Bylaw – 1981 section 15 Reserves
- Banks Peninsula District Council Bylaw – Parks and Reserves 2003

42. The Local Government Act 2002 requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008.[8] The first six of the bylaws fit into this category. However, the seventh, the Banks Peninsula District Council Parks and Reserves Bylaw 2003, was made under the Local Government Act 2002 and does not need to be reviewed until 2009.[9] 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 the relevant parts of the BPDC Parks and Reserves Bylaw now, in conjunction with the other parks and reserves bylaws. A new bylaw is to be put in place

43. 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(b)(vi), which allows local authorities to make bylaws for the purpose '*of managing, regulating against, or protecting from, damage, misuse, or loss, or for the preventing the use of, the land, structures, or infrastructure associated with --- reserves, recreation grounds, or other land under the control of the local authority.* The proposed parks and reserves bylaw covers aspects of all of the above mentioned sections.

44. Section 146(b)(vi) of the Local Government Act states that *a territorial authority may make a bylaws for its district for the purposes--- of managing, regulating against, or protecting from, damage, misuse, or loss, or for the preventing the use of, the land, structures, or infrastructure associated with --- reserves, recreation grounds, or other land <u>under the control of the territorial authority.</u>* The underlining of the words is the authors' emphasis. The Council under the Local Government Act therefore can not make a bylaw to cover land outside its district.

[8] 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.
[9] As it was made under the Local Government Act 2002, rather than the Local Government Act 1974.

3 Cont'd

45. The Council can however make a bylaw to cover land held under the Reserves Act under section 106, the reserves in question having to be under the Council's control.[10] The Council owns or controls and manages 6 Regional Parks, namely Kennedys Bush, Cass Peak, Otahuna Reserve, Coopers Knob, Ahuriri Scenic Reserve and Orongamai Reserve which are located within the Selwyn District Council area. All these parks are held pursuant to the Reserves Act 1977, and therefore only bylaws made under this Act will apply to these reserves. Bylaws made under the Reserves Act 1977 apply to only land held under that Act.

46. Section 94(1)(b) of the Reserves Act creates an offence in relation to any person who, without authorisation, "*causes or allows cattle, sheep, horses or other animals of any kind whatsoever to trespass on any reserve*". Section 94(1)(c) creates an offence in relation to a person who, without authorisation, "*liberates any animal on any reserve*". Section 94(2)(a) goes on to provide that an offence is committed by any person who "*when required by notice from the… administering body to remove any animal from a reserve, fails to do so within the period specified by the notice*". Therefore it is not necessary to make a bylaw for the control of dogs on the reserves held under the Reserves Act which are located outside the City boundary.

47. Section 94(1)(l) of the Reserves Act prohibits people trespassing on reserves with aircraft however there is no interpretation for aircraft at the beginning of the Act and therefore it is questionable if this wording covers hot air balloons, paraponts etc.

48. Offensive behaviour is covered by the Summary Offences Act 1981, Crimes Act 1961, Wildlife Act 1953, and the Animal Welfare Act 1999. For example, the Summary Offences 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. The Local Government Act does not allow for the issuing of infringement notices (instant fines), so the only option for enforcement by the Council for breaches of the bylaw is to prosecute. It is hard to argue that the cost of taking such a case to Court, given the unlikelihood of a conviction, is in the ratepayers' interest, particularly when the Police already have the powers to deal with these matters under the Summary Offences Act.[11] The Council is able to give warnings and take a private prosecution under the aforementioned Acts. The officer of the Council (it could be a park ranger), would be the officer in charge, and would swear the information on behalf of Council appearing in court as the main witness.

49. In the past rangers and authorised officers have been very successful in obtaining compliance with the present bylaws through education. Officers believe that this approach for dealing with transgressions of the bylaws and other acts of parliament should be continued in the future.

50. Under section 155(2) of the Local Government Act 2002, the Council must determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (the **NZBORA**). Under subsection (3), no bylaw may be made which is inconsistent with the NZBORA, notwithstanding section 4 of that Act.

51. The following legal advice has been received. The bylaw potentially places limits on freedom of movement which is protected by section 18 and also freedom of expression which is protected by section 14. (i.e. section 18 states that everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand, and section 14 states that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.) To some extent, the draft Bylaw restricts freedom of movement by authorising the Council to close reserves at certain times or for certain reasons (clauses 5, 7, 15, 17). The draft Bylaw also restricts freedom of expression by prohibiting people from erecting signs etc without Council permission.

[10] Section (106) of the Reserves Act enables the Council to make bylaws for land under its control even if the land is not in the Councils district.

[11] Although the power in the Local Government Act relates not just to regulating offensive behaviour, but to "minimising the potential" for offensive behaviour, the current bylaw wording for most of these behavioural issues is almost the same as the wording used in the Summary Offences Act.

3 Cont'd

52 However, section 5 of the NZBORA says

- "…the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

53. This section means that the Council can proceed with limiting the freedoms in the NZBORA if such a limitation is "*demonstrably justified in a free and democratic society.*"

54. There are good reasons for including these provisions in the bylaw. Some of the limits are already contemplated by the Reserves Act 1977, e.g. section 53 relating to recreation reserves. However, generally, the bylaw, aims to protect the rights of others to use Council reserves which on balance is reasonable. For example, the rules relating to the use of the Botanic Gardens are an attempt to balance the rights of all users to the Gardens. Similarly, the rules relating to the use of aircraft in Council reserves are for public safety purposes. While the bylaw will need to be interpreted in a practical way, the limits in the bylaw are reasonable limits which can be demonstrably justified in a free and democratic society. Consequently, there is a good argument that the draft bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

55. This report also covers matters relating to section 77 of the Local Government Act. Section 77 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.

56. The legal process for reviewing, making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Local Government Act 2002. If the Council agrees to adopt the attached 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 (attachment 4 and 5).

57. 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 Ngāi Tahu runanga 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.

58. When compiling the list of possible clauses to include in the new bylaw, officers concentrated on the clauses in the former Christchurch City Council Parks and Reserves Bylaw, because it addressed the issues prevailing on parks and reserves at the time. The former Banks Peninsula District Council adopted the Parks and Reserves Bylaw without change. As the model bylaws were designed for adoption by any local authority, they are quite generic and are not necessarily relevant to the unique conditions of the new Christchurch City Council area. The clauses of the other bylaws were perused when compiling the list of possible clauses to include in the new bylaw, however the revoking of the Parks and Reserves Bylaws that are still current from pre the 1989 local authority amalgamation is mainly an administrative tidy up.

59. Bylaws made under the Reserves Act need to be signed off by the Minister of Conservation, before they are enforceable under the Reserves Act 1977. There are no delegations from the Minister. With this in mind, officers have sent the draft bylaw to the Department of Conservation on Tuesday 15 January 2008 for comment and hopefully prior approval. At the time of writing this report prior approval had not been obtained there being ongoing discussions on a number of concepts and issues. Officers are hopeful that prior approval will be granted prior to this report going to Council. Officers will include an update of this aspect of the bylaw work in the report to go forward to full Council.

3 Cont'd

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

60. Yes, in "Section 155 Local Government Act 2002" and "Legal Consideration" sections above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

61. The LTCCP's strong communities strategic directions section prioritises: 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 feel safer; providing and supporting a range of arts, festivals and events; and protecting and promoting the heritage character and history of the city.[12]

62. The LTCCP's healthy environment strategic directions section prioritises: 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.[13]

63. The LTCCP's liveable city strategic directions section prioritises: improving the way in which public and private spaces work together.[14]

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

64. 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

65. A number of adopted Council strategies are particularly relevant when considering the use of parks and reserves.

66. 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.[15] 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".[16]

67. 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" .[17] Additionally especially in recent subdivisions many parks and reserves are positioned in the subdivision to enable pedestrians to walk between subdivisions without the need to keep to the streets. 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."[18]

68. 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".[19]

---

[12] Our Community Plan 2006-2016, Volume 1, p.60
[13] Our Community Plan 2006-2016, Volume 1, p.61
[14] Our Community Plan 2006-2016, Volume 1, p.64
[15] http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/
[16] Safer Christchurch Strategy, http://www.ccc.govt.nz/publications/SaferChristchurchStrategy/
[17] http://www.ccc.govt.nz/Publications/PedestrianStrategy
[18] Signed 3 October 2007 by the then Mayor, Garry Moore – The International Charter for Walking - Walk 21 – Taking walking forward in the 21st Century
[19] http://www.ccc.govt.nz/cycling/future/

3 Cont'd

69. 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".[20] Goal 4.6 states that the Council will endeavour to "ensure all Council services, facilities, amenities and places or recreation (for example parks and beaches, galleries, libraries and cultural venues) maximise the opportunities for people with disabilities to attend and participate.[21]

70. The *Grazing Management Strategy of Reserves on the Port Hills,* was developed to assist the Council with the maintenance of the large tracts of Council reserves on the Port Hills. This is to ensure that the vegetation on the reserves does not become an acute fire hazard in the summer. And that the native silver tussock vegetation is maintained without too much competition. The Council adopted the strategy in 2002.

71. The *Physical Recreation and Sport Strategy,* was developed by the Council as part of it's leadership role to bring together the perspectives of many different organisations involved in physical recreation and sport into one comprehensive strategy thereby providing support and direction for these organisations. The Council adopted the strategy in 2002.

72. The *Port Hills Recreation Strategy,* was adopted by the Council in 2004, its purpose being to analyse present recreation activities occurring on the Port Hills, identify gaps in the provision of recreational experiences, and thereby identify opportunities for future activities which could be provided in a coordinated integrated way.

73. These seven strategies touch on aspects of what a proposed parks and reserves bylaw would be developed to manage – that is, a balance between the different activities the community may wish to use parks and reserves for. The proposed bylaw would provide for reasonable controls to protect health and safety, to protect the public from nuisance, from lawful activities.

74. There are a number of policies that are relevant to parks and reserves as follows:

- Adopt a Park/Cemetery Scheme (adopted 10 August 1993)
- Coast Care Programme
- Victoria Square and Victoria Square Amphitheatre - Use Of (26 November 1990)

75. 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.

Do the recommendations align with the Council's strategies?

76. Yes, as above

CONSULTATION FULFILMENT

77. Initial discussions have taken place with the Ngai Tahu runanga Mahaanui Kurataiao (MKT).

78. 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, sporting associations and clubs, 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.

[20] Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp
[21] Equity and Access for People with Disabilities Policy, www.ccc.govt.nz/policy/equityaccessdisabilities.asp

3 Cont'd

STAFF RECOMMENDATION

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

(a) That under section 155(1) of the Local Government Act 2002, a bylaw is considered the most appropriate way of addressing the potential problems relating to parks and reserves identified in this report.

(b) That a bylaw should be made pursuant to the Local Government Act 2002 under the following powers:

- s.145(a) - to protect the public from nuisance
- s.145(b) - to protect, promote, and maintain public health and safety
- s.146(b)(vi) - to control the use of the land, structures, or infrastructure under the Council's control.

(c) That the purpose of the bylaw is to provide for the orderly management and control of parks and reserves vested in or under the control of the Council for the benefit and enjoyment of all users of those parks and reserves.

(d) That the attached draft bylaw be adopted for consultation.

(e) That public notice of the consultation be given in *The Press* and on the Council's website on 12 April 2008, and that public notice of the proposal be given in the *Christchurch Star,* the *Akaroa Mail* and other community newspapers distributed in the Christchurch area, as close as possible to 12 April 2008.

(f) That the attached Statement of Proposal and Summary of Information be adopted, and made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website.

(g) That the period within which written submissions may be made to the Council be 12 April 2008 to 14 May 2008.

COMMITTEE RECOMMENDATION

It is recommended that the staff recommendation be adopted, subject to the Committee receiving and agreeing to staff responses to issues raised during the course of the meeting, prior to the Council's deliberation of the report.

3 Cont'd

BACKGROUND (THE ISSUES)

79. The Council's bylaws currently comprise a collection of relatively diverse matters that may occur in parks and reserves, including: the use of parks and reserves; nuisance in parks and reserves, damage to parks and reserves; and miscellaneous provisions.

80. It is timely to review these bylaws because:

- the Local Government Act 2002 requires them to be reviewed
- the amalgamation of Banks Peninsula District Council with the Christchurch City Council, and the earlier amalgamation of Christchurch City, Riccarton Borough, Heathcote County, Waimairi District, Paparua County Councils means that legislation made under the six jurisdictions is gradually being amalgamated.

81. Some of the clauses contained in the existing parks and reserves bylaws:

- 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 of the Local Government Act 2002
- may no longer present a significant issue that needs to be controlled by way of a bylaw
- may not be possible or practical to enforce.

82. In general, it is accepted that the Council control of parks and reserves by way of a bylaw should not:

- apply to matters that are covered adequately by other legislation
- deal with matters that unnecessarily restrict individual freedoms[22]
- 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.[23]

83. A clause by clause analysis of possible new clauses derived from the existing bylaws to be included in the new bylaws is attached, indicating which of the possible clauses in the derived from the seven bylaws meet the above test for inclusion in a new Parks and Reserves Bylaw.

84. The Council has at its disposal a number of different tools for managing or preventing potential or perceived issues, including through other Acts of Parliament (Reserves Act), City or District Plans, through policies and strategies, through public education, through partnerships with other agencies, imposing conditions as the owner which includes having a management and control responsibility for some Crown owned reserves (e.g. through contracts), and through bylaws.

85. Bylaws are an effective tool for regulating some matters (such as vehicle traffic within reserves), but are an ineffective tool for regulating other matters (such as behaviour). The powers contained within the Local Government Act to enforce bylaws are limited, and in the case of the Parks and Reserves bylaw, the only tool available to enforce a breach of a bylaw offence is prosecution. Prosecution is not usually a viable option for behaviour-related matters, where often the offence is committed with little physical evidence or with little likelihood of establishing the identity of the offender (eg graffiti). An additional complication is that often those who are likely to breach behavioural bylaws are considered youths under the law,[24] and the cost of

[22] 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))

[23] 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.

[24] 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).

3 Cont'd

taking a prosecution is often disproportionate to the offence (e.g. throwing a stick or stone). The Local Government Act requires the Council to determine whether a bylaw is an appropriate tool for addressing each issue. In the case of behavioural clauses, the clause by clause analysis demonstrates that it is not an appropriate or effective tool. Behavioural matters are covered in the Summary Offences and Crimes Act, which is enforced by the Police. Police ultimately retain the power of arrest for uncooperative offenders and, unlike Council staff, maintain a 24 hour response capability for these types of activities. However, the Council is able to take a private prosecution under these Acts.

86. Council staff have indicated at a previous seminar that a bylaw was needed to prevent some activities in parks and reserves, to maintain public health and safety, and to regulate some activities which occur on parks and reserves. The aim of the bylaw would be to manage parks and reserves in such a way as to balance the various different, and sometimes competing, legal uses for which parks and reserves may be used.

87. Bylaw content has been discussed in detail in the section 155 analysis earlier in the report.

Nuisance/behavioural clauses

88. Any proposal to incorporate behavioural nuisance clauses (such as those addressing vandalism, behaviour which is offensive, obstructive or of annoyance to other users, 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.

89. 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)[25] or to use other, less formal, legal tools than prosecution
- having these clauses in the bylaw duplicates what is in the Summary Offences and Crimes Acts, which are primarily enforced by the Police although the Council is able to take a private prosecution if it so wishes.
- the Parks and Reserves Bylaw is intended to regulate otherwise lawful activity, the behavioural matters are already unlawful (under the Summary Offences Act, Crimes Act, Wild Life Act, Animal Welfare Act, Reserves Act, or the Litter Act)
- many of these issues (such as vandalism) 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, 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 minor nature of the offences is disproportionate to the cost of taking a prosecution and is therefore arguably not in the public interest.

[25] Infringement notices (instant fines) cannot be issued under the Local Government Act (under which a Public Places Bylaw would be made). 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.

3 Cont'd

90. Behavioural nuisance clauses have been in Parks and Reserves Bylaws in Christchurch for approximately 27 years during which 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, and because these types of clauses are of a minor nature, they are not easily enforceable.

91. The Police are empowered to address the behavioural issues (above) 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.

92. 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 behaviours, for the above reasons. The purpose of the bylaw is to regulate "lawful" matters. These sorts of behavioural matters are already offences under other law, such as the Summary Offences Act.

93. 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.

THE OBJECTIVES

94. The objective of the bylaw is to provide for reasonable controls for the protection of health and safety, and the avoidance of nuisance in parks and reserves, 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 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.

95. This report outlines the options for a new Parks and Reserves Bylaw, includes a draft new Parks and Reserves Bylaw, and recommends that the Council adopt the draft bylaw and agrees that consultation should be undertaken to seek community views on the draft.[26]

THE OPTIONS

96. The options are:

- Option one: Status quo, retain the seven bylaws
- Option two: Revoke the seven bylaws and create a consolidated bylaw
- Option three: Revoke the seven bylaws and create a consolidated, rationalised and modernised public places bylaw.

97. Option one, status quo, is not considered acceptable, as six of the seven 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 seventh bylaw, the BPDC parks and reserve bylaw, in order to introduce a single bylaw covering parks and reserves across the whole jurisdiction.

[26] The process for consulting the community is outlined in s.83 of the Local Government Act 2002 – the Special Consultative Procedure.

3 Cont'd

98. Option two, revoking the seven 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.[27] 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 attached clause by clause analysis shows, some of the possible clauses:

- 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.

99. Option three, revoking the seven bylaws and creating a consolidated, rationalised and modernised parks and reserves 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.[28] 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

100. Option three, revoking the existing seven bylaws and creating a consolidated, rationalised and modernised parks and reserves bylaw is preferable.

101. Rationalisation of the bylaw would remove some 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.

102. 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…".[29] 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.[30]

---

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

[28] As above.

[29] 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

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

3 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option

103. The preferred option is to revoke the seven bylaws and create a single, new, consolidated, rationalised and modernised parks and reserves bylaw.

	Benefits (current and future)	**Costs (current and future)**
Social	• Only matters of significance will be regulated • Only matters that are enforceable will be regulated • 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)	• Initial need to review and add to existing policies and keep them updated • People have to check with the Council before undertaking an organised activity – all activities covered, rather than specific activities being listed • Increased need for advertising/communications
Cultural	• None specific	• None specific
Environmental	• None specific	• None specific
Economic	• Only matters of significance will be regulated • Requirements more easily understood	• Some Council staff time – eg in preparation of advisory documents (may be similar to the current situation)

Extent to which community outcomes are achieved:

The community outcomes that this option would contribute to include:

- a **well governed city** by having single, new, consolidated, rationalised and modernised parks and reserves 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 be met in relation to enforcement.

Impact on the Council's capacity and responsibilities:

Inspection and enforcement activity for the bylaw, as proposed, is likely be less than or similar to that required under current bylaws.

Effects on Maori:

There will be no specific effect on Maori – consolidating, rationalising and modernising the seven bylaws will make them easier to understand for everyone.

Consistency with existing Council policies:

Current policies and strategies relating to the management or access of parks and reserves include:

- Victoria Square and Victoria Square Amphitheatre - Use Of (adopted 26 November 1990)
- Safer City Strategy (adopted 14 September 1994)
- Pedestrian Strategy for Christchurch (Adopted February 2001)
- Christchurch Cycling Strategy
- Equality and Access for People with Disabilities Policy
- Grazing Management Strategy on the Port Hills (Adopted 2002)
- Physical Recreation and Sport Strategy (Adopted 2002)
- Port Hills Recreation Strategy (Adopted 2002)
- Adopt a Park/Cemetery Scheme (Adopted 1993)
- Coast Care Programme

3 Cont'd

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 of 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 Transport and Greenspace Unit is strongly in favour of this option especially the Park Ranger Team because the proposed modernised consolidated bylaw, which rationalises the present seven bylaws currently in place will better support their work in the field.

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 six 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.

Maintain the Status Quo (if not preferred option)

104. 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 seven separate bylaws, would fail to acknowledge or respond to the amalgamation of the BPDC with the CCC or the earlier amalgamation in 1989. 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	• Existing bylaws may be known to some people - no new requirements to publicise	• 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
		• Un-necessary duplication of parts of the existing bylaws, with other more appropriate bylaws and other more recent legislation for example Resource Management Act 1991, meaning sections of the existing bylaws will never be used • Uncertainty and confusion about which of the seven bylaws apply in a particular area, unworkable
Cultural	• None specific	• None specific

3 Cont'd

Environmental	• None specific	• None specific
Economic	• Existing bylaws may be known to some members of the public	• Legal uncertainty as to the status and enforceability of the bylaws • Open to legal challenge

Extent to which community outcomes are achieved:

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 2002.

Impact on the Council's capacity and responsibilities:

Section 158 of the Local Government Act 2002 requires the Council to review six of the bylaws under consideration by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create an uncertain legal environment, in which the legal status and enforceability of the bylaws would be questionable.

Effects on Maori:

There will be no specific effect on Maori – maintaining the status quo would have a negative effect on the city as a whole.

Consistency with existing Council policies:

No.

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

The Legal Services Unit does not support maintaining the status quo, nor does the Transport and Greenspace Unit.

Other relevant matters:

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

105. The third option is to revoke the seven bylaws and create a single, new, consolidated bylaw. This new bylaw would largely replicate the existing seven bylaws, with some rationalisation where duplication exists. The clauses and language from the existing seven bylaws would largely be carried over to the new bylaw.

106. This is not the preferred option as some of the language in the seven bylaws does not follow the movement in New Zealand towards plain English legal drafting.[31] A further issue is that there is a need to rationalise the seven 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/bylaws 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.

[31] 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)

3 Cont'd

	Benefits (current and future)	**Costs (current and future)**
Social	• not much change – easy to understand	• aspects of the current bylaws are better enforced by other bylaws or legislation (e.g. City Plan, Resource Management Act 1991) • public expectations unlikely to be met (unrealistic 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	• none specific	• none specific
Environmental	• none specific	• none specific
Economic	• not much change – easy to understand	• (as above for social)

Extent to which community outcomes are achieved:

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.

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.

Effects on Maori:

There will be no specific effect on Maori.

Consistency with existing Council policies:

No

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

The Transport and Greenspace Unit does 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 six of the bylaws under consideration by 30 June 2008.

4. COUNCIL SUBMISSION ON IMPROVING PUBLIC SAFETY UNDER THE DOG CONTROL ACT 1996

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officer responsible:	Inspections and Enforcement Manager
Author:	Team Leader Animal Control

PURPOSE OF REPORT

1. The Department of Internal Affairs has instituted a review of the Dog Control Act 1996, the purpose of the Act being to make for better provision for the control of dogs. As part of the review public comment has been sought seeking input as to how to further improve dog control and public safety around dogs.

2. Council staff have reviewed the discussion documentation and staff advice is attached (see Appendix A) in the approved submission format for consideration by the Council.

EXECUTIVE SUMMARY

3. In response to recent dog attacks the Department of Internal Affairs was directed by the Minister of Local Government to consider options to improve dog safety and control, while maintaining a balance between the interests and freedoms of responsible dog owners with the need to protect the general public from harm from dogs. In October 2007 the Government decided on a package of initiatives, one of which was to publish a discussion document summarising a number of ideas that have been identified to improve dog safety and control and requesting public feedback on these ideas. The ideas presented in the document relate to measures to manage risks to the public associated with dogs. Should any of these ideas be pursued they would likely require further changes to the Dog Control Act 1996. They would also be likely to create costs for councils and therefore dog owners and/or ratepayers. The Government is seeking input about these ideas before it decides to develop them further. The discussion document outlines nine options and with each option raises questions respondents are asked to consider. The options and associated questions are worked through below.

4. It is recommended that, as a general principle, the Council should not support breed specific legislation. However, as the current legislation identifies three dog breeds and one dog type (as specified in Schedule 4) of the Dog Control Act 1996, that have been banned from importation into New Zealand, it is recommended that the dog breed, Presa Canario, be added to Schedule 4 of the Dog Control Act. This recommendation is based on the fact that as there is expert overseas evidence of extensive aggression demonstrated by dogs of this breed and on the basis of the evidence presented to DIA. In addition this breed is not currently in New Zealand and based on the evidence it would be opportune to discourage it entering the country.

5. It is recommended that Council should not support the mandatory destruction of dogs classified as dangerous. The current controls imposed on dangerous dogs are sufficient to control such dogs and these would be more effective if there was a consistent application of those controls across the country. Mandatory destruction of dogs classified as dangerous is not supported as it may result in enforcement officers scaling down the classification from a “dangerous dog classification” to a “menacing dog classification” to avoid the destruction option as proposed. The current legislative framework provides a range of options to staff to deal with dogs classified as dangerous such as neutering, secure fencing, muzzling and leashing in public, higher registration fees and Council approval of dog being given to other people. Staff suggest that the legislation should be amended to specify that all dangerous dogs are required to wear a distinctive reflective collar and that the owners property be required to have clear signage indicating a dangerous dog ‘in residence’. Both the collar and signage would be required to meet nationally set standards.

4 Cont'd

6. It is recommended that the Council should not support an elevation of the controls on dogs classified as menacing to the level of controls for dogs classified as dangerous. Staff consider the current 'risk factor matrix' utilised by officers to determine the classification is very effective. With this approach officers review factors such as degree of injury, type of victim (ie human, animal etc) situation of incident, impact on the victim, circumstances relating to the offence, minimum action the officer will take.

7. It is recommended that Council should not support the mandatory neutering of all dogs classified as menacing as this issue is not breed specific. However it is recommended that the Council should support the mandatory neutering of all dogs classified as menacing as long as the classification is based on dog behaviour not breed; this would require a change in the legislation. Dogs that demonstrate aggressive tendencies should be neutered to stop them breeding. There is also supportive evidence indicating that neutering can reduce the aggressive tendencies in some dogs.

8. It is recommended that the Council should not support the initiative of licensing all owners, as responsible dog owners would have to pay for the cost of this scheme primarily for irresponsible dog owners. Licensing all owners is impractical and would not have any real enforcement benefits and would not enhance public safety. Effectively the dog owner is licensed now, as they provide their details on registration of their dog and information through responsible dog owner application. Targeted owner licensing, focused on 'high risk' dogs which demonstrate aggressive tendencies, is considered a more appropriate approach as this would focus animal control staff on the problem dogs and their owners and thereby provide for better utilisation of Council resources. Should the Government introduce owner licensing then staff recommend that this be funded and operated by Central Government as there are insufficient local resources to implement such a scheme and its lack of outcome value would make it a very low priority for Animal Control Enforcement.

9. It is recommended that the Council should not support the proof of breed requirement. The only time breed matters is when a dog is classified on breed; breed per sé does not determine if a dog is menacing or dangerous. Evidence of breed may only be appropriate where there is discussion on whether the dog is considered a Schedule 4 dog, and in such circumstances the owner can object to this and would need to provide proof of breed. Animal Control staff recommend to the Council that a broader threshold for breed and type of classification would not enable the Council to improve public safety round dogs. Such an approach dilutes a breed based classification.

10. It is recommended to the Council that an owner placed on probation should be able to retain their dog(s), as any alternative actions may be in conflict with a court decision where they are permitted to retain the dog (unless that part of the Act was also amended). In addition it is considered that the surrender of dogs by probationary owners may have the negative impact of driving the ownership of high-risk dogs underground.

11. It is recommended that the Council should support a general initiative to increase dog containment standards for dogs classified as menacing or dangerous. Section 52A is sufficiently clear and gives dog owners options on how to contain their non classified dogs (ie not classified as menacing or dangerous). Staff believe that dog owner education is the key to generally resolving wandering dog matters for unclassified dogs. However in relation to dogs classified as menacing or dangerous, there is a need to decrease the potential contact and intimidation between menacing and dangerous dogs and the public. It is recommended to the Council that a new clause 52A(2A) under section 52A(2) be included to read:

    (2A) If a dog has been classified as dangerous or menacing then the owner of the dog must, at all times, ensure that it is controlled on a leash or confined within a securely fenced portion of the owner's property, set back from the street frontage or public access areas.

    Section 52A(2) would also need to be amended to read: The owner of a dog [that has not been classified as dangerous or menacing] must, at all times, ensure that ....

4 Cont'd

12. It is recommended to the Council that the current legislation is adequate and there is no need for a change in the Act to include round-up and faster destruction of unregistered dogs. To improve the application of the Act it is considered that territorial authorities need to enforce the legislation relating to unregistered dogs properly and consistently across the country. It is recommended that the current timeframe of a minimum of seven days for destruction of unclaimed unregistered dogs is not changed, as this is currently working effectively and has the ability to accommodate a wide range of situations faced in the animal control process.

FINANCIAL IMPLICATIONS

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

13. The submissions as recommended with no significant financial implications for the Council.

LEGAL CONSIDERATIONS

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

14. Yes. There are no legal implications arising from the DIA discussion document, and for the Council in making submissions on the discussion document. The Legal Services Unit has considered whether any issues arise under the New Zealand Bill of Rights Act 1990 in relation to the suggestions in the document around the licensing of dog owners, but consider that none arise. In any event this is an issue that must be considered by Central Government before implementing any changes to the legislation, such as introducing licenses for owners. When, and if, amendments to the Dog Control Act are made following this process then the exact nature of the amendments will be clear and there will be the ability for the Council to make further and, where necessary, more detailed submissions.

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?

15. Yes. The submission detailed supports the Council's Regulatory Services activities, which includes minimising potential hazards and nuisances from dogs (page 145 of the LTCCP, level of service under Regulatory Services).

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

16. Not applicable.

Do the recommendations align with the Council's strategies?

17. Not applicable.

CONSULTATION FULFILMENT

18. Not applicable on the basis that the report is responding to a request for response from Central Government.

4 Cont'd

STAFF RECOMMENDATION

It is recommended that the Council:

(a) Adopt the recommendations from staff as attached (refer Appendix A), in relation to each of the policy options identified in the discussion document "Improving Public Safety under the Dog Control Act 1996: Policy Options".

(b) That the attached recommendations (Appendix A) be submitted to the Department of Internal Affairs as the CCC response to the discussion document "Improving Public Safety under the Dog Control Act 1996: Policy Options".

COMMITTEE RECOMMENDATION

It is recommended that the staff recommendation be adopted.

5. SUMMARY OFFENCES (TAGGING AND GRAFFITI VANDALISM) AMENDMENT BILL 2008

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

PURPOSE OF REPORT

1. To report to the Council on the Summary Offences (Tagging and Graffiti Vandalism) Amendment Bill ("the Bill") and recommend a submission for the Council to approve on the Bill, and to recommend to the Council that it revoke the resolution of the 23 February 2006[1] to investigate a local Bill on the control of graffiti.

EXECUTIVE SUMMARY

2. The Bill amends the Summary Offences Act 1981 with the policy objectives to:

- reduce graffiti vandalism, tagging and defacing by creating a specific offence relating to those activities;
- by limiting the sale of spraycans to those 18 years or over;
- requiring spraycans to be kept securely in retail premises so the public cannot gain access without the help of an employee; and
- giving judges the option in sentencing a community sentence involving cleaning graffiti and tagging in their local community.

[1] *Submissions On The Manukau City Council (Control Of Street Prostitution) Bill And The Manukau City Council (Control Of Graffiti) Bill*, Council Agenda 23 February 2006

5 Cont'd

3. This Bill is part of the Government's anti-tagging strategy, known as Stop Tagging Our Place (STOP), which provides a nation-wide approach to addressing graffiti vandalism and tagging. This strategy was launched on the 15 February 2008 and includes a funding pool to support local communities and territorial authorities to reduce or eradicate graffiti vandalism in New Zealand.

4. The amendments proposed to the Summary Offences Act are similar matters that were proposed to be covered in the Manukau City (Control of Graffiti) Bill ("the Manukau Bill")which this Council submitted on in February 2006. The Council submission stated (in part): "*The Council submits that the Select Committee should consider whether, in addition or as an alternative to this bill, legislation controlling graffiti should be enacted, which could apply to either the whole of New Zealand, or individual areas as the need arises in those areas, instead of individual local bills being promoted for the same purposes throughout New Zealand".* If that view is still held by the Council then the Bill should be supported.

5. The Council at the meeting in February 2006 resolved also to "*initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council;* ….". Given the matters included in the Bill, and the consideration by the Government of the Manukau Bill, it is recommended that the resolution of the 23 February 2006 to investigate a local Bill be revoked.

6. The Bill had its first reading on 21 February 2008 and submissions are due on 11 March 2008. The timeframe for making a submission on the Bill is extremely short. As a result, at the meeting on 28 February 2008 the Council delegated to the Regulatory and Planning Committee the power to approve a submission on the Bill on behalf of the Council.

7. The draft submission attached generally supports the provisions in the Bill.

FINANCIAL IMPLICATIONS

8. No financial implications in making the submission other than the cost of having a Council representative go to Wellington to appear in support of the submission, if required.

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

9. Not applicable.

LEGAL CONSIDERATIONS

10. The legal considerations have been taken into account in drafting the submission on the bill.

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

11. The Bill does not propose significant changes to the legal requirements and duties on the Council, but some legal issues have been identified and are discussed in the submission.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

12. Not applicable.

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

13. No.

5 Cont'd

ALIGNMENT WITH STRATEGIES

14. Yes.

Do the recommendations align with the Council's strategies?

15. Yes - the submission is consistent with the Council's strategies that incorporate or address aspects of public safety and safer communities.

CONSULTATION FULFILMENT

16. Internal consultation has been carried out between the Strategy and Planning Unit, the Community Support Unit and the Legal Services Unit.

STAFF RECOMMENDATION

It is recommended that the Committee:

(a) Approve the draft submission to be sent to the Law and Order Select Committee.

(b) Decide whether the Council will appear in support of the submission on the Bill, and if so, who will represent the Council at the hearing.

(c) To recommend to the Council that it revoke its resolution of the 23 February 2006 to "*initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council."*

COMMITTEE RECOMMENDATION

It is recommended that the Council:

(a) Approve the draft submission to be sent to the Law and Order Select Committee.

(b) Agrees that it wishes to appear in support of its submission on the draft Bill and determine its representation in support of the Bill.

(d) Revoke the Council resolution of 23 February 2006 to "*initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council*".

5 Cont'd

BACKGROUND (THE ISSUES)

Manukau City (Control of Graffiti) Bill

17. The Council considered a report on the Manukau Bill at a seminar on 8 February 2006 and officers were asked to report further on options for the Council concerning measures to address the issues in Christchurch as far as these were similar to those purported to be occurring in Manukau City. The officers were requested to prepare suggested wording for a submission to the Select Committee[2] if it was determined such would be made. The Manukau Bill has been reported back by the Select Committee. Parliament, against the advice of the Select Committee, adopted it and it now awaits its third reading. This Bill is likely to negate the need for the Manukau Bill

18. The purpose of the Manukau Bill was to minimise the graffiti problem by penalising offenders and providing Police and the Council with the necessary powers to control the problem. It contained provisions relating to the sale of spray paint, requiring retailers to secure cans so the public could not access them without assistance, and banning their sales to persons under 18 years. In addition to offences by retailers there were offences for marking graffiti, carrying a graffiti implement with the intention of using it to mark graffiti, or without lawful excuse in a public place or private place to which the person had no right of entry. The Manukau Bill gave the Council the power to remove graffiti on private property if it was visible from a public place subject to no objection from the property owner and the Police were given the power to request name and address information and to arrest suspected offenders.

19. The Council, at its meeting on the 23 February 2006, resolved to:

- Initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council; …and

- The following submission was adopted by the Council:

    1. *The Christchurch City Council (the Council) wishes to applaud Manukau City Council's approach and intentions in introducing this bill. Although the Council does not wish to make submissions on the content of the bill, it submits that its support of the general purpose and intention of the bill should be noted by the Select Committee.*
    2. *The Council would also like the Select Committee to note that the Council has resolved to initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council.*
    3. *The Council submits that the Select Committee should consider whether, in addition or as an alternative to this bill, legislation controlling graffiti should be enacted, which could apply to either the whole of New Zealand, or individual areas as the need arises in those areas, instead of individual local bills being promoted for the same purposes throughout New Zealand.*
    4. *The Council wishes to appear in support of its submission."*

Select Committee Report on the Manukau Bill

20. The Local Government and Environment Select Committee considered submissions on the Bill in April/May 2006 and in its report to Parliament recommended that it not be passed. The report stated: "*The bill seeks to address an activity which has increasingly damaging effects on communities, residents, and businesses in the area (and indeed in other areas around the country), and we recognise Manukau City Council's effort and achievement in proactively developing a proposed solution. However, we do not believe that this bill will achieve its objective of controlling graffiti for the reasons explained in this report. The report also discusses possible initiatives that may assist in the control of graffiti".*[3]

---

2 Report of the Local Government and Environment Committee ("The Select Committee") on the Manukau City Council (Control of Graffiti) Bill, 2006

3 The Select Committee *op cit*, page 2

5 Cont'd

21. The Select Committee considered the Bill as presented had a number of deficiencies which are discussed in reasonable detail. The description of graffiti was wider than but not inconsistent with the description in section 33 of the Summary Offences Act 1981. They considered it was too broad and could capture some legitimate activities such as street art. They saw the problem of "tagging" as being the major problem as it had negative effects on local communities and could lead to street-gang conflicts. They had reservations about the limitations of local legislation to deal with matters of criminal law which have national application. They pointed out that: "*The limited jurisdiction of the bill also means that certain provisions in the bill could be easily circumvented. If enacted, the bill's provisions would apply to Manukau City only. Minors (those under 18 years of age) could continue to buy spray paints in adjoining areas for use in Manukau, and would be able to purchase paints in the city itself through older people. We believe there is a possibility that introducing punitive measures against graffiti in one area could result in the displacement of offending to neighbouring areas. Similarly, by concentrating its restrictions on spray paints, the bill may inadvertently encourage the use of alternative graffiti implements".*[4]

22. The Select Committee was advised that the Manukau Bill was inconsistent with the New Zealand Bill of Rights Act 1990 in two areas. *Firstly, clause 7, which prohibits the sale of spray paint to minors, appears to be inconsistent with section 19(1) of the Act. Under this section, all persons have the right to freedom from discrimination on the grounds of age from the age of 16. As there is insufficient evidence to assume that restricting the supply of spray paint to minors will minimise graffiti, certain measures in the bill seem disproportionately severe, and may penalise people purchasing spray paint for lawful purposes. Secondly, under section 23(4) of the New Zealand Bill of Rights Act, any person detained for an offence, or suspected offence, has the right to refrain from making a statement. Clause 15 of the bill, which empowers police or authorised persons to require any person suspected of committing an offence to supply their name and address, and the name and address of anyone else suspected of involvement in the alleged offence, appears to infringe this right.*

23. It was noted by the Select Committee that the Manukau Bill appeared to have been based largely on the South Australia Graffiti Control Act 2001, the provisions of which are similar to those proposed in the Manukau Bill. It (the South Australia legislation) does not appear to have succeeded in addressing the area's graffiti problem: "*Without a dedicated body to monitor and enforce it, and educate people about its provisions, the legislation has had minimal effect, and many retailers remain unaware of the law. Random checks by the state's Crime Prevention Unit indicate that retailers are not enforcing the requirement to store spray cans securely, nor are they restricting sale to minors. Furthermore, no prosecutions have been taken under the Act. We note that the bill would require retailers to bear significant compliance costs. We believe that it is unfair to expect retailers to assume these costs, when there is little evidence that the measures proposed would actually reduce the incidence of graffiti in the Manukau district*."

24. The Select Committee noted there were no provisions in law that specifically refer to "marking graffiti" but activities of that kind are covered by sections 11 (wilful damage) and 33 (bill sticking and defacing) of the Summary Offences Act 1981, and section 269(2)(a) (intentional damage) of the Crimes Act 1961. These provisions are enforced by the Police. The Select Committee considered, despite the above, that the legislation is out of date and a new offence category of graffiti would assist those responsible for prosecuting offenders.

---

4 The Select Committee, *op cit*, page 3

5 Cont'd

25. The Select Committee noted with approval the work done by the Christchurch City Council to reduce graffiti vandalism in receiving complaints and by the graffiti removal team to deal promptly with such cases by clean up or painting over. The Legal Art Programme also received approval as a means of dealing with offenders to obtain changes in attitude. These programmes arose from a report prepared for the Council in 1999.[5] That report provided an extensive background to the origins of "graffiti" as experienced at that time, who was undertaking this activity in Christchurch, the different types of "graffiti" being undertaken, and examined suggested counter-measures. These included; rapid response removal; bylaws requiring property owners to remove graffiti; anti-graffiti paint treatments; prosecution of all cases, however minor; retailer education; surveillance by CCTV of graffiti prone sites; environmental design to reduce graffiti vandalism; legal sites for "street art"; and education and awareness programmes.

26. A number of these measures had been undertaken by the Council but often with limited success, particularly against "tagging" which is often undertaken by younger offenders. The Ministry of Justice "Beat Graffiti" Guide[6] advises that: "*A multi-faceted approach, based on using proactive, reactive, and enforcement tools, is considered the most appropriate way to manage graffiti. It also points out that local government is not the only organisation with a role to play, and suggests developing partnerships, with groups such as retailers and business associations; Keep New Zealand Beautiful; infrastructure providers; Neighbourhood Support groups; Housing New Zealand; schools and education representatives; youth justice agencies; and the Police*."

27. The Select Committee's report on the Manukau Bill, after commenting on the Government's initiatives re graffiti including a six point plan, stated: *" At present the Government's position is that there is no need for legislative change, but the Crime Prevention Unit will provide ongoing advice on whether legislation is adequate to deal with graffiti**. We are concerned that the law as it stands does not offer appropriate deterrents, and believe that its strengthening and consistent enforcement are fundamental to the success of the plan.** The first year of the graffiti strategy ends on 30 June 2007 and is intended to establish an effective basis for future projects. Work in the first year includes a stock-take of anti-graffiti initiatives around the country, a review of current sentences and the feasibility of restricting the sale of graffiti implements, and direct engagement with territorial authorities. We understand that the whole strategy will be rolled out over four years and will receive further funding as the initiatives gain momentum. Our major concern is that four years for full implementation of the plan is too long. Graffiti is one of many aspects of youth behaviour that needs addressing urgently. While we support much of the six-point plan, we recommend that it proceed with greater speed. **We strongly urge the development of national legislation to address this issue with appropriate resourcing**."*[7]

28. The Select Committee also noted the following in relation to the sale of spray paints*: "We believe that one way of addressing the promoter's concerns about the supply of graffiti implements would be to **promote a voluntary memorandum of understanding between the Council and retailers regarding the display and storage of spray paints, and possibly restrictions on the sale of these items to persons under 16.** The possible advantage of the responsible retailing method over a mandatory lock-up approach is that it provides more flexibility to act appropriately to the particular circumstances of the retailer. This is more likely to give the retailer a sense of ownership of the project, and increase the probability of the project being enforced effectively. Partnership initiatives have been undertaken between local authorities, retailers, and the spray paint industry in the United States, New South Wales, and Waitakere City."*[8]

---

5 Sarah Wylie, *Graffiti Vandalism: The Current Situation in Christchurch and Potential Counter-Measures*, July 1999

6 Ministry of Justice and Local Government New Zealand, *Knowhow Beat Graffiti Guide 06*, 2006

7 The Select Committee, op cit, page 6

8 The Select Committee, op cit, page 5

5 Cont'd

Summary Offences (Tagging and Graffiti Vandalism) Amendment Bill 2008 and STOP

29. The aim of the Bill is to amend the Summary Offences Act 1981 (the Act) in order to reduce vandalism and tagging by:

- creating a specific offence for graffiti vandalism, tagging and defacing;
- limiting the sale of spraycans to those 18 years or over;
- requiring that spraycans must be kept securely so that members of the public cannot gain access to them without the help of an employee; and
- giving judges the option in sentencing of a community sentence to provide an opportunity for offenders to "right their wrong" and clean graffiti vandalism and tagging from their local community

30. The Bill is part of the Government's anti-tagging strategy, known as Stop Tagging Our Place (STOP) which provides a nation-wide approach to addressing graffiti vandalism and tagging. This strategy was launched on the 15 February 2008 and includes a funding pool to support local communities and territorial authorities to reduce or eradicate graffiti vandalism in New Zealand. The projects must meet at least one of the following objectives to be eligible for funding:

- be additional to existing activity – i.e. this funding is not intended to replace existing resourcing
- Deliver rapid removal
- Monitor the incidence of graffiti vandalism as part of a wider removal programme
- Use Crime Prevention Through Environmental Design (CPTED) principles as a tool to address the problem
- Raise awareness of the negative effects of graffiti vandalism and tagging through educational programmes and material
- Provide diversionary projects for young people currently involved in graffiti vandalism and graffiti.

31. Projects that will be run by non-government organisations, must have the written support of the nearest territorial authority, and be a legal entity. They must be able to demonstrate the intervention logic behind the project. In order to do this, applicants must show a link between the local problem, the project's activity and the likely impact of the activity on the problem. It must be clearly evident why the specific action funding is being sought for will reduce local graffiti vandalism. They must be able to show there is reasonable reason to believe that the project is likely to achieve its aims. This would include comment on the likely success of the project supported, where possible, by evidence of similar projects that have proven to be successful locally, or elsewhere. They must be able to demonstrate that the project goals or objectives will contribute to any wider strategies to reduce graffiti vandalism. If no such strategy exists, evidence that relevant stakeholders in the area have been consulted and support the project.

32. Projects not eligible for funding include any existing graffiti vandalism programmes currently if the sole purpose of the contract or grant would be to "top up" current funds. Consideration may be given to funding existing projects if funding is required to add value by a new approach or additional benefits. Projects to set up database/s to track graffiti offending or tagging would not be eligible for funding at this time. The Crime Prevention Unit is currently researching best practice models for such databases. Once this research is complete funding may be available in future funding/ grant rounds for database/s found to meet the best practice model. Any funding is available by application to the Crime Prevention Unit of the Ministry of Justice.

5 Cont'd

Comments on the Bill Provisions

33. The Regulatory impact statement in the Bill refers to the Manukau Bill and acknowledges that graffiti vandalism is a nation-wide problem, which a local Bill would not address. It states that "*there is a need for appropriate central Government action on the issue*". It identifies three options: the preferred option in the Amendment Bill, the *status quo* (which was not considered suitable, despite the offences that currently existed under the Summary Offences Act, due to failing to allow for community sentences and no restrictions on sales of spraycans) and the Manukau Bill option. This option was not preferred due to both its geographical limitations and lack of provisions for a community sentence to provide the opportunity for offenders to clean graffiti from their local community.

34. The preferred option provides for a new section 11A – a specific graffiti and tagging offence - with increased sentences up from $200 fine to a maximum $2,000 fine or a community-based sentence or both. In addition it is proposed that there be restrictions on sales of spraycans to person below the age of 18 years and requirements on retailers to display spraycans only directly under the control of the retailer with a fine of up to $1,500 for sale to a person under 18 or on failing to securely store spraycans. The strengthening of the offence provisions and the increased penalties, with the ability for a community based sentence appear to be welcome amendments. It would be easier in relation to enforcement if an instant fine could be given to offenders, however, the proposed submission identifies that providing for this as an infringement offence could undermine the value in also proposing community based sentences. As the Police will be the main enforcer of this legislation it is not really a matter for the Council to be overly concerned with in any event.

35. Although some doubt was expressed by the Select Committee examining the Manukau Bill regarding the effectiveness of regulating the sale of spraycans (see paragraphs 21 and 22 above), Parliament clearly believes this could be of some effect. In addition to the South Australian legislation quoted by the Select Committee as being of doubtful effectiveness it is understood New South Wales is also questioning such provisions. However, the other option mentioned by the Select Committee of voluntary controls seems to be operating well in Porirua City. It has been pointed out that spraycans are not the only instrument used for graffiti vandalism and tagging. Particularly in regard to "tagging" it has been alleged that felt pens, shoe polish, liquid paint and etching are becoming more regular methods of tagging.

36. The Minister of Justice accepts that there are new methods but considers spray-paint cans are the most common implement used in graffiti vandalism. Although etching of glass surfaces appears to be increasing as a tagging method, and with large costs involved in the replacement of windows, etc, it is unlikely that a similar restriction could be included in the proposed section 14A on the sale of glass cutting/marking equipment because many common, everyday items can be used for this purpose. The benefits of the restrictions on sales to persons under 18 years old is stated in the explanatory note to be "*to address the availability of the current primary implement for graffiti vandalism and to reduce the numbers of young persons entering the graffiti culture*" (page 6). There is no other discussion in the explanatory note to the Bill as to why the age restriction of under 18 has been chosen, instead of say under 17 or under 16. In comparison with the statistics and information in the Land Transport (Driver Licensing) Amendment Bill as to why the age limit should be lifted, it appears that the Government may not have done its homework on why the age restriction for the sale of spray paint cans should be to "under 18s". In light of the section 19(1) of the New Zealand Bill of Rights Act 1990, as raised by the Select Committee in their report on the Manukau Bill it is not clear that this age limit is appropriate. It is therefore recommended that the Council's submission seek further investigation by the Government/the Select Committee on this issue.

5 Cont'd

37. It should be noted that the wording of the new section 14A applies to "sale", not supply. There is no definition of "sale" to be inserted, so in its ordinary meaning this would not include supply. It would appear then that no offence is created if any person **supplies** a spraycan to a person under the age of 18 years. It is a defence to proceedings for an offence of selling a spraycan if the defendant proves they are an Education Board or the governing body of a tertiary education provider, or employee of either, and the buyer is enrolled at the institution and the sale was for the purpose of enabling the buyer to undertake a course at the institution. Staff have reviewed whether there also needs to be an exclusion provided for Project Legit but, as currently worded, there is no need as Project Legit does not sell spraycans. However, the submission asks the Select Committee to note that if the offence was to be amended to cover the "supply" of spraycans then a exclusion would be required for Project Legit and any other similar initiatives.

THE OBJECTIVES

38. To make a submission on behalf of the Council on the Bill.

THE OPTIONS

39. The Council has already delegated the power to the Committee to make a submission on this Bill, however, it would still be a possible option for the Committee to decide that a submission on the Bill should not be made. However, as graffiti is an issue that this Council has been discussing in relation to its Public Places Bylaw, it would appear to be more appropriate for the Council to make a submission than not. A submission could be one in support, one in opposition or one that supports parts of the Bill but not others.

THE PREFERRED OPTION

40. In light of the recent discussions of Council in relation to graffiti the preferred option is that the Committee approve a submission that is generally in support of the Bill, and in particular the strengthened offence provision and increased penalties. There are concerns as to whether central government has given sufficient consideration to the sale of spray cans age restriction as no information is provided in the explanatory note as to reasons for the age that has been chosen. The preferred option for the submission in this respect is not in support of one age or another but a recommendation for the Government to further investigate the appropriate age.

6. PROPOSED CHRISTCHURCH CITY COUNCIL MARINE AND RIVER FACILITIES BYLAW 2008

General Manager responsible:	General Manager City Environment, DDI 941-8656
Officer responsible:	Network Planning Unit Manager
Author:	John Allen, Policy & Leasing Administrator – City Environment Group

PURPOSE OF REPORT

1. To outline the background and options relating to the review of the present Banks Peninsula District Marine Facilities Control Bylaw 2002 and to recommend that the Planning and Regulatory Committee adopt and recommend:

   (a) That the Council resolve that there is a need for a new Marine and River Facilities Bylaw 2008 to control activities in, on and around marine facilities not covered by other bylaws or Acts of Parliament; and

   (b) That the Council adopt the attached proposed Marine and River Facilities Bylaw 2008 for public consultation.

2. The Local Government Act 2002 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 that they were designed for. This report summarises the results of a review of the Banks Peninsula District Marine Facilities Control Bylaw 2002 and proposes a new draft bylaw.

6 Cont'd

EXECUTIVE SUMMARY

3. The proposed bylaw covers marine facilities, and extends to river and estuary facilities in the Christchurch City area which are managed or owned by the Council. It does not cover privately owned wharves, jetties, or other related facilities. Some examples of Council-owned marine and river facilities include:

    1. wharves and jetties, for example, Akaroa Wharf and the South Brighton Jetty;
    2. slipways, for example, Pigeon Bay slipway;
    3. launching ramps, for example, Brooklands Reserve Launching Ramp;
    4. boat landings and punting points, for example, those on the Avon River.

    For a summary of the marine and river facilities owned by the Council, see Attachment 5.

4. The interaction between the Council's district boundaries, the jurisdiction of Environment Canterbury, and the impact of the Foreshore and Seabed Act, are covered in the legal considerations section of this report. In summary, the Council can make bylaws over land within its district boundaries, which, in the Banks Peninsula area, cross harbour mouths, so include waters within Akaroa and Lyttelton Harbours. The coverage of the proposed bylaw does not extend to activities on the water, other than in relation to the mooring of boats at Council-owned or controlled wharves, jetties, etc. Environment Canterbury has responsibility for managing activities that occur on the water, specifically those in the navigable inland waters and coastal marine area. Activities on the water are covered by the Environment Canterbury Navigation Safety Bylaws 2005 and Environment Canterbury's Coastal Management Plan.

5. The existing bylaw covers a range of issues including: restrictions around vehicles on wharves, berthing of vessels on wharves, removal of offenders from marine facilities, removal of offending vehicles and vessels, obstructing launching ramps, and other general restrictions on the use of marine facilities, including the wilful destruction of marine facilities and interference of any other persons use or enjoyment of marine facilities.

6. 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 – 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.

7. These matters are covered in more detail in the background section of this report, and in the clause by clause analysis (Attachment 1). For example, a number of the existing clauses in the bylaw do not meet the above tests, and they have not been included in the proposed bylaw.

8. This report outlines the options[1] arising from the review of the Banks Peninsula District Marine Facilities Control Bylaw 2002:

    1) Option one: Status quo, retain the existing bylaw
    2) Option two: Revoke the existing bylaw and replace it with a rationalised and modernised bylaw.

9. The recommended option is option two. A proposed bylaw, the Marine and River Facilities Bylaw 2008, has been prepared for Councillors' consideration. (See Attachment 2).

10. The purpose of the proposed bylaw is to provide for the orderly management and control of marine and river facilities that are owned or under the control of the Council for the benefit and enjoyment of all users of those facilities.

[1] This is required under s.77 of the Local Government Act 2002

6 Cont'd

11. The new proposed bylaw covers:

    a) The use of marine and river facilities by charter or commercial operators

    b) The use of wharves and jetties, including:

    - Requiring permission for vehicles (other than service or emergency vehicles) to drive or park on wharves and jetties.
    - The maximum weight of vehicles allowable on the Akaroa and Wainui wharves.
    - The maximum allowable time that vessels can lie alongside Akaroa Wharf.
    - Restrictions on certain vessels berthing at wharves and jetties.
    - The removal of vessels on wharves under certain weather conditions.
    - Vessels not to be left unattended at wharves at night.
    - The obstruction of launching ramps and fuelling facilities by users.
    - A requirement that anyone using any marine or river facilities pays any applicable fees.

12. If the Council adopts the attached proposed 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.

SECTION 155 ANALYSIS

13. The Local Government Act 2002 requires local authorities to determine whether a bylaw is the *most appropriate* way of addressing the perceived problems (section 155(1) of the Act), in other words, that the Council is satisfied that a bylaw is necessary, and the perceived problems cannot be dealt with in any other manner.

14. In reviewing the existing bylaw, there were a range of issues which are already addressed by means other than this bylaw. For example, as the clause by clause analysis (Attachment 1) demonstrates, some of the issues covered by the existing bylaw are covered by existing or proposed Parks and Reserves, Traffic and Parking and Public Places bylaws. Other issues are covered by legislation, including the Summary Offences Act 1981 and the Trespass Act 1980. Further issues are covered by Environment Canterbury's Navigation Bylaws, or through its Coastal Management Plan. Only a small range of issues remain to be regulated by the proposed bylaw.

15. Issues not covered by other legislation or tools have been included in the proposed bylaw (Attachment 2). The range of issues that have been identified as needing to be regulated through a bylaw for the orderly management and control of marine and river facilities include:

    - Vessels in bad weather conditions being left on wharves and damaging the wharves structure.

    - Heavy vehicles being driven onto wharves and damaging the wharves' structure and potentially endangering safety.

    - Vehicles and vessels obstructing fuelling and launching ramps and causing inconvenience.

    - Chartered or commercial operations using Council controlled marine or river facilities without permission to the detriment of other users, such as recreational users.

    - The issue of unattended vessels on wharves.

    - Boats lying alongside Akaroa Wharf for long periods and restricting access for other users.

6 Cont'd

16. A bylaw is an effective tool for regulating these matters and therefore meets the section 155(1) test in the Local Government Act 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 1990. 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.

17. 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.

FINANCIAL IMPLICATIONS

18. It is not anticipated that the adoption of the proposed bylaw will adversely impact on enforcement demands, and in some areas may be more cost effective, as the coverage of the proposed bylaw is narrower than that of the existing bylaw.

19. The Council has twenty-five park rangers operating in the Christchurch City Council district. As the park rangers (who enforce the existing Parks and Reserves Bylaw) are located in the area covered by the proposed Marine and River Facilities Bylaw, they are well placed to enforce the proposed bylaw. This would include monitoring, education, investigation, evidence collection, taking prosecutions, etc. Park rangers could be delegated powers to enforce the proposed Marine and River Facilities Bylaw 2008.

20. Funding for an increase in the ranger presence in the Banks Peninsula area will be pursued in relation to both this proposed bylaw and the proposed Parks and Reserves Bylaw 2008 through the LTCCP process.

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

21. The budgets for the City Environment group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.

LEGAL CONSIDERATIONS

22. There are a number of elements to consider in establishing the Council's jurisdiction for this bylaw, these include the Council's district boundaries, the Foreshore and Seabed Act, Environment Canterbury's jurisdiction and responsibilities, and the facilities under Council's control (that are not on Council-owned land).

The Council's district boundary

23. The Council's district boundary was altered in 1997 through a Local Government Boundary Alteration Notice to include the area between the existing seaward boundary of each district and the line of mean low water springs. This means that the Council has the jurisdiction to put in place bylaws to manage issues that may occur inland of the mean low water springs (regardless of "ownership" being vested in the Crown under the Foreshore and Seabed Act). This allows the Council, for example, to make bylaws to cover dog control on beaches, in the area seaward of the mean high spring waters, but inland of the mean low water springs). The Council gazetted district boundary crosses the mouth of the estuary of the Avon and Heathcote Rivers.

24. In the case of the Banks Peninsula District Council, its gazetted district boundary is drawn across the entrances of harbours and bays. This means that the Council can make bylaws to cover issues that may occur in the harbour area (however, see below concerning Environment Canterbury's role).

The Foreshore and Seabed Act 2004

25. The Foreshore and Seabed Act vested ownership of the public foreshore and seabed in the Crown. The public foreshore and seabed is the marine area that is bounded —

6 Cont'd

(i) On the landward side by the line of mean high water springs; and

(ii) On the seaward side, by the outer limits of the territorial sea.

The Foreshore and Seabed Act does not affect the ownership in any structure or thing that is fixed to, or under or over, any area of the public foreshore and seabed.

26. However, ownership of the foreshore and seabed needs to be distinguished from the City boundaries and the powers of the Council to make bylaws for the City. As mentioned above, the 1997 Local Government Boundary Alteration Notice altered Christchurch's seaward boundary to reach to the line of mean low water springs. Therefore, even though the foreshore may now be owned by the Crown, the Council still retains the power to make bylaws in relation to that part of the foreshore, i.e. the area inland of the line of mean low water springs because that area is located within the City boundaries.

Environment Canterbury

27. Environment Canterbury has responsibility for managing activities that occur in the navigable inland waters and coastal marine area, including activities on the water. These are managed through a combination of Environment Canterbury's Navigation Safety Bylaws 2005 and its Coastal Management Plan. The coverage of the proposed bylaw does not extend to activities on the water, other than mooring boats at Council-owned or controlled wharves, jetties, etc.

Council Controlled Facilities - The proposed bylaw covers marine and river facilities which are Council managed or owned. It does not cover privately owned wharves, jetties, or other marine facilities (see Attachment 5).

Rivers and Estuaries
Although the coverage of the existing Marine Facilities Control Bylaw covered things and activities in the Banks Peninsula marine area, the bylaw proposed in this report covers both marine and river facilities, and covers the whole of the new Christchurch City district. This is to cover some of the issues that were contained in a little-used pre-1989 amalgamation bylaw.[2] The coverage of the proposed bylaw has therefore been extended to include river facilities that are owned or managed by the Council. Coverage extends only to those river facilities that are attached to the shore/riverbank and are owned by the Council, not to any Council owned facilities that are not attached to the shore, such as mooring posts.

28. The Local Government Act 2002 allows local authorities to make bylaws for its district (ie Christchurch City), to cover certain things or situations. These include:

(a) s.145(a) – to protect the public from nuisance.
(b) s.145(b) – to protect, promote, and maintain public safety
(c) s.146(b)(vi) – to control the use of the land, structures, or infrastructure…under the Council's control.

29. The proposed Marine and River Facilities Bylaw 2008 will be made under the Local Government Act sections 145 (a) and (b) and section 146 (b) (vi).

30. Under section 155(2) of the Local Government Act 2002, the Council must determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990. Under subsection (3), no bylaw may be made which is inconsistent with the Bill of Rights Act. 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.

[2] The Avon Heathcote Estuary and Rivers Bylaw 1982 was made prior to the 1989 amalgamation of boundaries into the Christchurch City Council, and covered a range of activities and things in river and estuary areas. Many of these activities and things are now covered by other bylaws or legislation, however, a small number of issues remain. The Avon Heathcote Estuary and Rivers Bylaw 1982 - Christchurch City Bylaw No. 120 is being revoked as part of the proposed Parks and Reserves Bylaw 2008.

6 Cont'd

31. This report also covers matters relating to section 77 of the Local Government Act. Section 77 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.

32. The legal process for reviewing, making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Local Government Act 2002. If the Council agrees to adopt the attached proposed bylaw, it is required to appoint a hearings panel, to agree to a submission closing date, and to agree to the form of the Statement of Proposal and Summary of Information for consultation.

33. 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. Due to the timeframes involved, effective consultation with the Ngai Tahu runanga Mahaanui Kurataiao (MKT) has not yet taken place. MKT will have the opportunity to express its views on the bylaw review during the Special Consultative Procedure.

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

34. Yes, in the "Section 155 Analysis" and "Legal Consideration" sections above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

35. The LTCCP's strong communities strategic directions section prioritises the following: providing accessible and welcoming spaces and facilities; providing 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.[3].

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. There are no specific Council strategies that are relevant to the use of Council owned or controlled marine and river facilities.

38. The Council has a number of policies that are related to marine facilities, but these are largely concerned with the provision and maintenance of the facilities, including things such as location and accessibility. These policies do not directly relate to the coverage of either the existing or the proposed bylaw.

Do the recommendations align with the Council's strategies?

39. Yes, as above

CONSULTATION FULFILMENT

40. If the proposed bylaw is adopted by the Council, stakeholder groups will be given the opportunity to make a submission as part of the Special Consultative Procedure.

[3] Our Community Plan 2006-2016, Volume 1, p.60

6 Cont'd

STAFF RECOMMENDATION

It is recommended that the Planning and Regulatory Committee adopt and recommend:

(a) That the Council resolve that the attached proposed bylaw is the most appropriate way to address the problems relating to marine and river facilities; 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) That a bylaw be made under the Local Government Act 2002 under the following powers:

- s.145(a) – To protect the public from nuisance.
- s.145(b) – To protect, promote, and maintain public safety.
- s.146(b)(vi) – To control the use of the land, structures, or infrastructure under the Council's control.

(c) That the Council resolve that the purpose of the proposed bylaw is to provide for the orderly management and control of marine and river facilities that are owned or under the control of the Council for the benefit and enjoyment of all users of those facilities.

(d) That the attached proposed bylaw be adopted for consultation.

(e) That public notice of the consultation be given in The Press and on the Council's website on 12 April 2008, and that the public notice of the proposal be given in the Christchurch Star, the Akaroa Mail and other community newspapers distributed in the Christchurch area, as close as possible to 12 April 2008.

(f) That the attached Statement of Proposal and Summary of Information be adopted, and that they be made available for public inspection at all Council service centres, Council libraries and on the Council's website.

(g) That the period within which written submissions may be made to the Council be between 12 April 2008 and 14 May 2008.

COMMITTEE RECOMMENDATION

It is recommended that the staff recommendation be adopted.

6 Cont'd

BACKGROUND (THE ISSUES)

41. Marine facilities include things such as wharves, jetties, slipways, launching ramps, pontoons, storage parks, and any other Council owned or controlled structures used or associated with marine activities. River facilities include launching ramps, punting points, boat landings, jetties and any other Council owned or controlled structures used or associated with river activities. The proposed bylaw covers Council owned or managed marine or river facilities within the Christchurch City district. For a summary of the facilities covered by the proposed bylaw, see Attachment 5.

42. The existing bylaw comprises a collection of diverse matters that may occur in, on and around marine facilities, including: restrictions around vehicles on wharves, berthing of vessels on wharves, removal of offenders from marine facilities, removal of offending vehicles and vessels, obstructing launching ramps, and other general restrictions on the use of marine facilities, including the wilful destruction or interference of any other person in the use or enjoyment of marine facilities.

43. It is timely to review the existing bylaw as:

- The Local Government Act 2002 requires it to be reviewed.
- The amalgamation of Banks Peninsula District with Christchurch City means that bylaws made under the two jurisdictions are gradually being amalgamated.

44. Some of the clauses contained in the existing bylaw:

- Reflect matters that were significant in the past, but are no longer relevant.
- Are now covered by national legislation 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 of the Local Government Act.
- May no longer present a significant issue that needs to be controlled via bylaw.
- May not be possible or practical to enforce.

45. A clause by clause analysis of the bylaws is attached (Attachment 1), indicating which of the clauses in the existing bylaw meet the above tests for inclusion in the new bylaw.

46. In general, it is accepted that Council control of marine facilities via a bylaw should not:

- Apply to matters that are covered adequately by other legislation.
- Deal with matters that unnecessarily restrict individual freedoms[4].
- Cover matters that are insignificant in effect or magnitude.
- Deal with matters that can be more appropriately dealt with by other tools.
- Be impractical to enforce.[5]

47. The Council has at its disposal a number of different tools for managing or preventing potential or perceived issues, including through policies and strategies, through public education, imposing conditions as the owner of public places (e.g. through conditions of use), and through bylaws.

48. In reviewing the existing bylaw, a range of issues have found to be addressed already through means other than this bylaw. For example, as the clause by clause analysis (Attachment 1) demonstrates, some of the issues are covered by the proposed Parks and Reserves, Traffic and Parking, or Public Places bylaws. Environment Canterbury Navigation Bylaws 2005 and Coastal Management Plan also cover issues that were in the existing bylaw. Taking this coverage by other legislation or tools into account, a small range of issues remain to be regulated by the proposed bylaw.

---

[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))

[5] 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.

6 Cont'd

49. Behavioural issues that were covered by the existing bylaw are adequately covered by legislation such as the Summary Offences Act 1981 and the Trespass Act 1980. Rangers have been successful in obtaining compliance with the existing bylaw through education and believe that this educational approach should be continued in the future. Any issues that cannot be dealt with through education, or through enforcement of the proposed bylaw, can be dealt with by the Police, who ultimately retain the power of arrest for uncooperative offenders.

50. This report outlines the options for a new marine and river facilities bylaw, includes the proposed bylaw, and recommends that Council adopt it and agrees that consultation be undertaken to seek community views on the proposed bylaw.[6]

THE OPTIONS

51. This report outlines the options[7] for the review of the Banks Peninsula District Marine Facilities Control Bylaw 2002:

    1) Option one: Status quo, retain the existing bylaw.

    2) Option two: Revoke the existing bylaw and replace it with a rationalised and modernised bylaw.

52. Option one, status quo, is not considered acceptable, as the existing bylaw must be reviewed by 30 June 2008 under the requirements of section 158 of the Local Government Act 2002. As previously outlined, some aspect of the existing bylaw are no longer necessary. Additionally, the existing bylaw covers the previous Banks Peninsula District Council area, rather than reflecting the amalgamation of Banks Peninsula District with Christchurch City.

53. Option two, revoking the existing bylaw and creating a rationalised and modernised marine and river facilities bylaw, is the preferred option. This would meet the review requirements of section 158 of the Local Government Act and meet the tests, at a broad level, in section 155 of the Local Government Act. 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

54. Option two, revoking the existing bylaw and creating a rationalised and modernised bylaw is preferable.

55. 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…".[8] 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.[9]

---

[6] The process for consulting the community is outlined in s.83 of the Local Government Act 2002 – the Special Consultative Procedure.

[7] This is required under s.77 of the Local Government Act 2002

[8] 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

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

6 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option

56. The preferred option is to revoke the existing bylaw (the Banks Peninsula District Marine Facilities Control Bylaw 2002) and replace it with a rationalised and modernised bylaw.

	Benefits (current and future)	**Costs (current and future)**
Social	• Only matters of significance will be regulated • Only matters that are enforceable will be regulated • An easier to understand bylaw (modern plain English) • Public expectations more likely to be met (realistic and enforceable clauses)	• Increased need for advertising/communications
Cultural	• None specific	• None specific
Environmental	• None specific	• None specific
Economic	• Only matters of significance will be regulated • Requirements will be more easily understood by the public and enforcement officers	• None specific

Extent to which community outcomes are achieved:

The community outcomes that this option would contribute to include:

- A **well governed city** by having a new, rationalised and modernised 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.

Impact on the Council's capacity and responsibilities:

Inspection and enforcement activity for the bylaw, as proposed, is likely be less than or similar to that required under the current bylaw. See previous comment on pursuing funding for enforcement of both this proposed bylaw and the proposed Parks and Reserves Bylaw 2008 through the LTCCP process for the Banks Peninsula area.

Effects on Maori:

There will be no specific effect on Maori –rationalising and modernising the bylaw will make the requirements easier to understand for everyone.

Consistency with existing Council policies:

The Council has a number of policies that are relevant to marine facilities, but these largely relate to the provision and management of the facilities. These policies do not directly relate to the coverage of either the existing or the proposed bylaw.

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

The Transport and Greenspace Unit is strongly in favour of this option, especially the Park Ranger Team, because the proposed bylaw will better support their work in the field.

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 the bylaw under consideration by 30 June 2008.

6 Cont'd

Maintain the Status Quo (if not preferred option)

57. The first option is to do nothing and retain the bylaw. 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.

	Benefits (current and future)	**Costs (current and future)**
Social	• Existing bylaw may be known to some people - no new requirements to publicise	• Legal uncertainty as to the status and enforceability of the bylaw • Reputation of the Council tarnished by not meeting LGA requirements • Confusion caused by duplication and overlap of the bylaw with other law, including ECan's Coastal Management Plan and Navigation Safety Bylaws.
Cultural	• None specific	• None specific
Environmental	• None specific	• None specific
Economic	• None specific	• Legal uncertainty as to the status and enforceability of the bylaw • Open to legal challenge

Extent to which community outcomes are achieved:

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.

Impact on the Council's capacity and responsibilities:

Section 158 of the Local Government Act 2002 requires the Council to review the bylaw under consideration by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create an uncertain legal environment, in which the legal status and enforceability of the bylaw would be questionable.

Effects on Maori:

There will be no specific effect on Maori – maintaining the status quo would have a negative effect on the city as a whole.

Consistency with existing Council policies:

The Council has a number of policies that are relevant to marine facilities, but these largely relate to the provision and management of the facilities. These policies do not directly relate to the coverage of either the existing or proposed bylaw.

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

The Legal Services Unit does not support maintaining the status quo, nor does the Transport and Greenspace Unit.

PART B - REPORTS FOR INFORMATION

7. REGULATORY AND PLANNING COMMITTEE - TERMS OF REFERENCE

It was agreed that this report be held over for further consideration at the Committee's April 2008 meeting.

The meeting concluded at 12.47pm

CONSIDERED THIS 27TH DAY OF MARCH 2008

MAYOR