



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

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officer responsible:	Legal Services Manager DDI 941 8561
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PURPOSE OF REPORT

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

EXECUTIVE SUMMARY

2. A review was undertaken of the Bylaws, to ascertain whether the provisions of the Bylaws were still current or needed amendment.
3. The purpose of the Bylaws was:
 - To set the process for the licensing of shooting galleries and the issuing of permits for amusement devices.
 - To regulate public bathing and impose controls over public baths.
4. Prior to the Banks Peninsula District joining the Christchurch City Council, the Council did not have bylaws covering amusement devices and nuisances. The control of amusement devices is covered by the provisions of the Amusement Devices Regulations 1978.
5. The two Swimming Pools Bylaws are very similar, but the provisions of both bylaws are now covered either by the terms and conditions of use on persons entering the particular public swimming pools, or other Council policies, or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
6. It was determined that there is no need to re-enact the Bylaws or make new bylaws with the same provisions, because the harm the Bylaws were originally introduced to deal with is now addressed in other ways.
7. The Bylaws were made, or had effect under now repealed provisions of the Local Government Act 1974, and are therefore subject to section 293(3) of the Local Government Act 2002, which provides that such bylaws, not revoked or expiring before 1 July 2008, are revoked on that date.
8. On 28 February 2008 the Council resolved:
 - (a) That its intention is to allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools to be revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002, on the grounds that the provisions in these bylaws are redundant in that they are either covered by other legislation, and, in the case of public swimming pools, are no longer needed because of other council policies and the terms and conditions of use and normal operating procedures of the public swimming pools.
 - (b) To issue a public notice in relation to resolution (a), seeking comments from the public on the Council's intention, and providing that any comments must be given to the Council within 1 month of the date of publishing the notice.
 - (c) To consider any comments received from the public and then make a final decision on its intention in resolution (a).

9. The public notice was published in the following papers on the following dates:
- the Press on 8 March 2008
 - the Star on 7 March 2008
 - the Akaroa Mail on 7 March 2008.
10. As at 9 April 2008, there have been no comments received in relation to the intention to allow these bylaws to automatically revoke. Staff therefore recommend that the Council confirm its decision.

FINANCIAL IMPLICATIONS

11. There are no financial constraints to the automatic revocation of the Bylaws.

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

12. Not applicable.

LEGAL CONSIDERATIONS

13. Under the Local Government Act 2002, a current bylaw made before 1 July 2003 under a now repealed provision of the Local Government Act 1974 will be automatically revoked on 1 July 2008. There is no need to review such bylaws under section 158.
14. The Amusement Devices and Public Swimming Pools Bylaws were made under now repealed provisions of the Local Government Act 1974 (sections 684(1)(30), (33), and (33A) – section 686 was also relevant). Because these were the authorising powers for making the Bylaw, and not just the procedural provisions for making the Bylaw and they have been repealed, this means they are bylaws deemed to be made under the LGA2002 by section 293(1), and are subject to section 293(3).
15. The powers embodied in the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 are a duplication of provisions contained in the Amusement Device Regulations 1978. The provisions in the two Public Swimming Pools Bylaws are now covered, either by the conditions of use on persons entering the particular public swimming pools, or other Council policies (the normal operating procedures), or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
16. As the Bylaws provisions are not considered necessary (they would be unlikely to pass the first test in section 155 of the LGA2002, that a bylaw must be the most appropriate way of addressing the perceived problem) they should therefore be revoked, and allowing them to be revoked on 1 July 2008 by the operation of section 293(3) appears to be the appropriate course of action in this case.

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

17. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

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

19. As above.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

20. Yes.

CONSULTATION FULFILMENT

21. The public notice was published to ascertain the views of the public before the Council confirmed its decision to allow the Bylaws to be automatically revoked in accordance with section 293, but no comments were received.

STAFF RECOMMENDATION

It is recommended that the Council confirm its intention and allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw No 103 (1979) Public Swimming Pools to be automatically revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002.

COMMITTEE RECOMMENDATION

That the staff recommendation be adopted.