

27. 11. 2008

**REGULATORY AND PLANNING COMMITTEE  
6 NOVEMBER 2008**

**A meeting of the Regulatory and Planning Committee  
was held on Thursday 6 November 2008 at 9.30 am**

**PRESENT:** Councillor Sue Wells (Chairperson),  
Councillors Helen Broughton, Sally Buck (from 9.40 am),  
Ngaire Button, Claudia Reid, Bob Shearing (to midday) and Mike Wall.

**IN ATTENDANCE:** Councillor Norm Withers (to 12.32 pm).

**APOLOGIES:** Apologies for absence were received and accepted from Councillors  
Yani Johanson and Chrissie Williams.

An apology for lateness was received and accepted from Councillor  
Sally Buck.

Councillor Sally Buck arrived at 9.40 am and was absent for part of  
clause 6.

Councillor Bob Shearing departed at midday and was absent for clauses  
4, 5, and 9.

The Committee reports that:

**PART A - MATTERS REQUIRING A COUNCIL DECISION**

**1. PROPOSED ALCOHOL RESTRICTIONS IN PUBLIC PLACES BYLAW**

<b>General Manager responsible:</b>	General Manager Strategy and Planning, DDI 941-8281
<b>Officer responsible:</b>	Programme Manager Strategy and Planning
<b>Author:</b>	Teena Caygill, Policy Analyst

**PURPOSE OF REPORT**

1. The purpose of this report is to seek the Council's approval to adopt for public consultation the proposed Alcohol Restrictions in Public Places Bylaw. This report contains an options analysis. It also contains a Statement of Proposal (including the proposed Bylaw) and Summary of Information (as required by sections 83 and 86 of the Local Government Act 2002).

**EXECUTIVE SUMMARY**

2. The Local Government Act 2002 (the Act) provides local councils with the power to make bylaws for 'liquor control purposes'. Such bylaws can help to reduce alcohol-related harm in our communities and provide an effective early intervention tool for the Police to manage or prevent alcohol-related harm.
3. Liquor control bylaws are a valuable tool, but their coverage is limited.<sup>1</sup> They can control the possession, consumption and carriage of alcohol in public places, and 'public places' is limited to land that is 'under the control' of the Council and that is open to the public, and includes any road, even if it is not under the control of the Council. Such bylaws cannot manage alcohol consumption on licensed premises or on private land, and they cannot regulate intoxication or any behaviour arising from it (such as vandalism or littering).

<sup>1</sup> Section 147 of the LGA02 specifies the bylaw-making power for bylaws for 'liquor control purposes', including the limits on that power.

## 1 Cont'd

4. The Police have special powers under the Act to enforce liquor ban bylaws (unlike other Council bylaws, which the Police do not enforce) and Police support for the ban areas and their enforcement is important. A partnership approach with the Police was taken in the development of the proposed Bylaw.
5. Liquor control bylaws are not a complete solution to reducing alcohol-related harm but they are part of the puzzle. Such bylaws provide a local approach to addressing local problems and are most successful when they are part of a wider, multi-level approach to tackle alcohol issues. Other Council approaches underway currently include: the Safer Christchurch Strategy, the Alcohol Accord, the Transport Accord, recent funding for the Safe City Officer Programme and crime prevention cameras, Christchurch's designation as an International Safe City, the upcoming review of the Alcohol Policy (which relates to liquor licensing), and the ongoing work of the Liquor Licensing Team, working in conjunction with the Police and Community and Public Health to apply the Sale of Liquor Act 1989. Many other initiatives are happening at a national level. Together, these approaches work at different levels to complement each other and to address different aspects of alcohol-related harm in our communities.
6. This report contains an options analysis, with three options. Option one: status quo, retain the two existing bylaws; option two: revoke the bylaws and have no bylaw; or option three: revoke the bylaws and replace them with an updated bylaw. The preferred option is option three. This will provide a single bylaw to cover the whole district; allow improvements to be made to the operation and functionality of the bylaw itself; and update the ban areas to reflect the current context. This is covered in more detail in the options analysis section.
7. The proposed Alcohol Restrictions in Public Places Bylaw would revoke and replace our existing alcohol-related bylaws, which are:
  - (a) the Christchurch City Liquor Control Bylaw 2004; and
  - (b) part 2, Liquor Control in Public Places, of the Banks Peninsula District Council Public Places and Signs Bylaw 2004.
8. The Act requires that these bylaws are reviewed by 1 July 2009 (Christchurch City Council bylaw) and 15 December 2009 (Banks Peninsula District Council bylaw). Due to the abolition and inclusion of Banks Peninsula District Council into Christchurch City Council and the need to align the legislation across the new jurisdiction, the two bylaws will be reviewed together (by 1 July 2009) and the proposed new Bylaw will revoke and replace both bylaws. Once the bylaws have been reviewed, they do not have to be reviewed again for ten years.<sup>2</sup> However, in the interim, if any new areas are identified where alcohol restrictions should be in place, an amendment can be made to the Bylaw. An amendment requires the same process as creating a bylaw ie a section 155 analysis and undertaking the Special Consultative Procedure.<sup>3</sup>
9. The existing bylaws and options for a new bylaw with updated ban areas were considered by the Alcohol Policy and Liquor Control Bylaw Subcommittee, which met seven times from July to September 2008. The Subcommittee had the same membership as the Regulatory and Planning Committee and its terms of reference were *"to work with staff to carry out the initial review of the Alcohol Policy and Liquor Control Bylaw, and consider other measures (regulatory and non-regulatory) the Council could adopt to address liquor related behavioural problems and make recommendations to the Regulatory and Planning Committee"*.<sup>4</sup>
10. The Subcommittee considered a number of potential areas for inclusion in the new bylaw. Of these potential areas, the Subcommittee advised staff not to go ahead with any further analysis or investigation into a ban along parts of the Summit Road; a ban in all parks; a ban across the whole city or district; a ban in the residential area around Ilam/University of Canterbury; and a ban in Lyttelton, for a variety of reasons.<sup>5</sup> The Subcommittee advised staff to undertake a full s.155 analysis on the following ten areas to assess whether or not they should be included in the new bylaw, and this report covers these ten areas:

<sup>2</sup> Section 159 of the LGA02 – 'Further reviews of bylaws every 10 years'

<sup>3</sup> Section 156 of the LGA02 – 'Special consultative procedure must be used in making, amending, or revoking bylaw made under this Act'

<sup>4</sup> 3 July 2008, Regulatory and Planning Committee minutes

<sup>5</sup> Refer to Subcommittee agendas/reports and minutes for more information on why these areas were not considered appropriate for further investigation at this time.

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- (a) Central City – existing ban
- (b) Hagley Park – no existing ban
- (c) South Colombo – existing ban
- (d) New Brighton Mall and Marine Parade – no existing ban
- (e) Northlands Mall and surrounds – no existing ban
- (f) Merivale Mall and surrounds – no existing ban
- (g) The Esplanade, Sumner – existing ban
- (h) Jellie Park – no existing ban
- (i) Spencer Park – existing ban
- (j) Akaroa – existing ban.

11. In making a bylaw, the Act requires councils to consider whether or not a bylaw is the *most appropriate tool* to address any problems.<sup>6</sup> In assessing the evidence to justify putting a liquor control bylaw in place, it is important to consider other solutions or tools, as well as the limitations of any data or evidence of problems. As well as difficulties in separating the impacts of changes to Police resourcing or targeted Police operations from changing crime trends, it is also difficult to separate data relating to alcohol generally, from data relating specifically to alcohol consumption *in public places*, which is what a bylaw could address. A further issue is that the nature of each potential ban area is different, and the evidence to justify seeking a ban in each area will therefore vary and may not be comparable.
12. The section 155 analysis for this bylaw is in two parts. The analysis on the bylaw as a whole is in the background section of this report, while the section 155 analysis for each of the ten areas under consideration is in a series of **attachments**. The ten area assessment attachments contain information on the proposed ban areas, including the nature and extent of any alcohol-related problems. A clause-by-clause analysis was also completed on the two existing bylaws, and new clauses have been drafted to provide appropriate controls in relation to the ban areas.
13. Of the ten areas above that underwent a full section 155 analysis, the following areas are recommended for inclusion in the new Bylaw:

Alcohol Ban Area	Times, days or dates during which alcohol restrictions would apply	Existing or new ban area?	Change from existing area or times?
Central City	At all times	Existing	Change to area (now inclusive of the boundary roads and extended to the Avon River along Park Terrace)
Hagley Park	10pm–7am, seven days a week	New	-
South Colombo	At all times	Existing	No change
New Brighton Mall and Marine Parade	At all times	New	-
Northlands Mall and surrounds	Thursday, Friday and Saturday nights, from 9:00pm to 6:00am	New	-
Sumner Esplanade	From 7:00pm each Thursday until midnight each Sunday	Existing	Change to hours - currently ban finishes at 7pm on Sundays - extension proposed so ban finishes at midnight on Sundays
Jellie Park	At all times	New	-
Akaroa	New Year's Eve only	Existing	Change to area (now includes the lower part of Stanley Park)

<sup>6</sup> This is referred to as a section 155 analysis and is required by s.155 of the LGA02.

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14. The assessment of the Spencer Park New Year's Eve ban revealed that the current ban is of limited use, and there was no compelling evidence to continue it in the new Bylaw. The assessment of whether or not a new Alcohol Ban Area should be put in place in the Merivale Mall area concluded that a ban should be discarded at this stage, and other ways of addressing the identified problems should be explored in the interim.
15. In addition to the areas specified in the proposed Bylaw, the Bylaw also provides the Council with the power to put Temporary Alcohol Ban Areas in place, by resolution, in order to control anticipated or potential negative alcohol-related behaviour associated with specified events or specified dates. This approach could potentially be used to control problem areas during specific times, such as in the Ilam area during the University's Orientation Week. The proposed Bylaw specifies a number of matters the Council must consider before resolving that a Temporary Alcohol Ban Area is the best course of action (see paragraph 27 of the Legal Considerations section for more information on Temporary Alcohol Ban Areas, and also paragraphs 45-48 of the Background section).

**FINANCIAL IMPLICATIONS**

16. There are some cost implications for the provision of signage in ban areas and for ongoing publicity/public education about the ban areas.
17. The potential costs of signage for implementing the Bylaw will depend on the number of alcohol ban areas in the bylaw and how large they are; the number of signs needed in each of the areas; and the cost of the design, materials and installation of the signs. Signage is important for both compliance and enforcement of the Bylaw.
18. To give an indication of the cost of signs, in 2007 new replacement metal alcohol signs cost approximately \$85 per sign (not including installation). Some inquiries of other councils revealed that Wellington City Council had a budget of \$29,000 for implementing its new bylaw (signage, advertising and pamphlets) earlier this year, while Manukau City Council has an annual budget of \$20,000 for replacement liquor ban signs (where existing signs are vandalised or stolen).
19. As well as signage costs, there will be some ongoing costs for publicity/public education about the bans and their implications (whether via pamphlets or radio or newspaper advertisements). The different ban areas will require different publicity/public education approaches and these may be seasonal.
20. Indicative costs cannot be estimated at this stage, but will accompany the future report to Council on the adoption of the new bylaw (expected in May 2009, after consultation and hearings have taken place). The signs will be funded from the Transport & Greenspace Unit's signage budget.

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

21. The budgets for the Regulatory Services group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.<sup>7</sup>

**LEGAL CONSIDERATIONS**

22. The process in the Act for making, amending or revoking bylaws is the same, and is outlined in sections 83, 86, 155 and 156 of the Act. If the Council agrees to adopt the **attached** proposed Bylaw, it is required to approve the draft Statement of Proposal and Summary of Information for consultation, agree a submission closing date and should appoint a hearing panel to hear any oral submissions on the proposal.

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<sup>7</sup> Our Community Plan 2006-2016, Volume 1, page 149.

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23. Section 155 of the Act requires local authorities to determine that the proposed Bylaw:
- (a) is the most appropriate way of addressing the perceived problems
  - (b) is in an appropriate form
  - (c) is not inconsistent with the New Zealand Bill of Rights Act 1990.<sup>8</sup>

The Legal Services Unit considers that the form of the Bylaw, as proposed, is in the most appropriate form, and that the Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 (see the section 155 analysis below).

24. The proposed Bylaw would be made under the bylaw-making power in section 147 of the Act. This allows a council to make a bylaw for "liquor control purposes". Without repeating the whole of those sections of the Act, section 147 essentially allows a council to make a bylaw prohibiting or otherwise regulating or controlling the consumption, possession and carriage of alcohol in public places, including in vehicles in public places. "Public places" in section 147 is confined to land that is under the control of the Council and open to the public, and includes any road, even if it is not under the control of the Council. The bylaw-making power in section 147 also explicitly exempts the transport of unopened bottles or containers of alcohol to or from licensed premises or private residences in an area covered by a bylaw made for liquor control purposes.
25. The Police are empowered by the Act to enforce the provisions of a bylaw made for liquor control purposes. This is different from all other bylaws, where enforcement is undertaken by warranted Council officers. Section 169 of the Act gives the Police powers of arrest, search and seizure in relation to enforcing liquor ban bylaws. Section 170 sets out the conditions applicable to the power of search in section 169.
26. The proposed Bylaw would revoke and replace the Christchurch City Council Liquor Control Bylaw 2004; and part 2, Liquor Control in Public Places, of the Banks Peninsula District Council Public Places and Signs Bylaw 2004. The Act requires that these bylaws are reviewed by 1 July 2009 (CCC bylaw) and 15 December 2009 (Banks Peninsula District Council bylaw).
27. The proposed Bylaw provides the Council with the power to put Temporary Alcohol Ban Areas in place, by resolution, in order to control anticipated or potential negative alcohol-related behaviour associated with specified events or specified dates. Section 151 of the Act and section 13 of the Bylaws Act 1910 make it clear that a bylaw may contain discretion. Section 13 of the Bylaws Act 1910 states "no bylaw shall be invalid because it... leaves any matter or thing to be determined... or prohibited from time to time in any particular case by the local authority making the bylaw...". The Council must be careful to ensure that any discretion left to the Council is not so great that it might be considered unreasonable (which could make the bylaw, or part of it, invalid). To ensure this is not the case, clause 5 of the proposed Bylaw specifies a number of matters the Council must consider before it imposes a temporary ban. The process used to explore whether or not to put a Temporary Alcohol Ban Area in place must also follow normal Council decision-making process, as set out in sections 77-82 of the Act.
28. This report also covers matters relating to section 77 of the Local Government Act, which relates to decision-making and requires local authorities to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the council's capacity. The options analysis forms the second part of this report.
29. 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. Whilst all attempts have been made to initiate discussions with Mahaanui Kurataiao (MKT), there has been no response to date. As a result, consultation with MKT will take place through the Special Consultative Procedure.

<sup>8</sup> Relevant parts of the Bill of Rights in relation to the proposed Alcohol Free Public Places Bylaw may include the right to freedom of peaceful assembly, freedom of association, freedom of movement, freedom from discrimination and freedom from unreasonable search and seizure. Sections 14, 16, 17, 18, 19 and 21 of the New Zealand Bill of Rights Act 1990.

1 Cont'd

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

30. Yes, as above. Additionally, the section 155 analysis is covered in two ways throughout this report. Aspects relating to the proposed Bylaw as a whole are covered in the background section below, while aspects relating to the specific areas in which the Bylaw might apply are covered in the **attachments** to this report, with a separate attachment for each of the ten areas under consideration.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

31. The Alcohol Ban Areas put in place through the proposed Bylaw may contribute to perceptions of safety and have the potential to reduce alcohol-related harm. However, such restrictions are not a complete solution to alcohol-related issues, but they are part of a wider, multi-faceted approach to managing or reducing alcohol-related harm. The Bylaw would align with parts of the LTCCP.
32. The LTCCP's Strong Communities strategic directions section lists "working with partners to reduce crime, help people avoid injury and help people feel safer" as a priority.<sup>9</sup> Relevant parts of the LTCCP include:
- (a) A Safe City: We live free from crime, violence, abuse and injury. Rates of crime and injury decline.
  - (b) A Prosperous City: We have a strong economy that is based on a range of successful and innovative businesses. Christchurch has a strong, healthy economy.
  - (c) A Healthy City: We live long, healthy and happy lives. Our city environment supports the health of the community.
  - (d) An Attractive and Well Designed City: Christchurch has a vibrant centre, attractive neighbourhoods and well-designed transport networks. Christchurch is attractive and well maintained.

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

33. The proposed 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**

34. 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.<sup>10</sup>
35. Though not a strategy, the Council policy *Alcohol-related Harm At Public Events - Policy To Reduce* is related to the intent of the proposed Bylaw. It requires effective joint planning between event organisers/promoters and key stakeholder groups (including the Police) to reduce alcohol-related harm and to care for people affected by alcohol, at outdoor events funded or approved by the Council.

<sup>9</sup> Our Community Plan 2006-2016, Volume 1, p.60

<sup>10</sup> <http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/>

1 Cont'd

**Do the recommendations align with the Council's strategies?**

36. Yes, as above.

**CONSULTATION FULFILMENT**

37. The Act gives the Police special powers in order to enforce bylaws made for liquor control purposes. Liquor control bylaws are unique in this regard. Police support for any liquor ban is essential to ensure its enforcement, and as such, its effectiveness. The Police nominated a staff member to the CCC project team working on the bylaw review. This provided a central point through which Police intelligence and advice was coordinated.
38. A Community Board seminar was held on 7 July 2008 to introduce members to the review and to seek information on alcohol-related issues in their communities. Some separate Community Board consultation was undertaken, where required, on some of the proposed ban areas.
39. As previously mentioned, a subcommittee was formed to consider the review as it progressed. The Alcohol Policy and Liquor Control Bylaw Subcommittee had the same membership as the Regulatory and Planning Committee and met seven times during the review and development of the bylaw, from July to September 2008. Staff assisting the Subcommittee have come from across a number of Council units, including the Strategy and Planning Group, Legal Services Unit, and the Liquor Licensing Team.
40. If the proposed Bylaw is adopted by the Council, it will then go out for public consultation in accordance with the Special Consultative Procedure (section 83 of the Act). Anyone can make a submission and will be given the opportunity to be heard before a hearing panel.

**STAFF RECOMMENDATIONS**

It is recommended that the Council, in relation to the proposed Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009, resolve:

- (a) That the attached proposed Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009 meets the requirements of section 155 of the Local Government Act 2002.
- (b) That the attached Statement of Proposal (which includes the proposed Bylaw) and Summary of Information be adopted for consultation.
- (c) That public notice of the consultation be given in *The Press* and *Christchurch Star* newspapers and on the Council's website at the start of the consultation period, and that public notice of the proposal be given in the *Akaroa Mail* and other community newspapers distributed in the Christchurch district area, as close as possible to the start of the consultation period.
- (d) That the consultation documents be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website during the consultation period.
- (e) That the consultation period (within which written submissions may be made to the Council) be between 28 January 2009 and 2 March 2009.
- (f) That a hearings panel be appointed to hear submissions, deliberate on those submissions and to report back to the Council on the final form of the Bylaw.

**1 Cont'd**

Councillor Broughton moved by way of amendment:

*“That the residential area of Ilam and the University was not included as a possible alcohol ban area owing to the lack of support from police. This is an ongoing area for concern to Council owing to complaints from residents and it could choose to address this issue in the future”.*

Councillor Sally Buck seconded the motion.

The above motion when put to the meeting was declared **lost** on division number 1 by 6 votes to 1, the voting being as follows:

**Against (6):** Councillors Button, Buck, Reid, Shearing, Wall and Wells.

**For (1):** Councillor Broughton.

Councillor Buck moved an amendment to the above that:

*“If through the submission process, submitters raise the issue of alcohol-related problems in areas other than the eight areas outlined in the alcohol ban bylaw, then these areas be reviewed by the Committee”.*

Councillor Broughton seconded the motion.

The above motion when put to the meeting was declared **lost** on division no 2 by 5 votes to 2, the voting being as follows:

**Against (5):** Councillors Button, Reid, Shearing, Wall, and Wells.

**For (2):** Councillors Broughton and Buck.

**COMMITTEE RECOMMENDATIONS**

That the Council adopt staff recommendations (a)–(f) and the following additional recommendations:

- (g) That the Jellie Park alcohol ban area be extended to the entire park with the exception of the Jellie Park pool and sports complex.
- (h) That the Hagley Park and Environs alcohol ban area be extended to include the area to the north of the Avon River in Little Hagley Park, bounded by Carlton Mill Road.
- (i) That the New Brighton Mall, Marine Parade & Environs alcohol ban area be amended so that New Brighton Mall no longer includes the words “the river and Lonsdale Street”; and Marine Parade description be defined to include New Brighton Beach – “Marine Parade (from Beach Road to Bridge Street), and the beach alongside that section of Marine Parade (down to the mean low water spring level)”.

It was noted that:

- (a) The Committee **agreed** unanimously to congratulate the Police on their efforts to curb alcohol-related issues in Christchurch.
- (b) Staff will ensure that the proposed alcohol ban areas are clear and that all areas are accurate and that any changes will be considered by Council in November 2008.



1 Cont'd

**BACKGROUND (THE ISSUES)**

**Section 155 analysis**

41. Elements of the section 155 analysis<sup>11</sup> can be applied to the bylaw as a whole, while for some matters, the section 155 analysis needs to be undertaken on each individual area in which the bylaw might apply. This section of the report covers the bylaw as a whole, while the attachment for each of the areas under consideration contains the section 155 analysis for that specific area, particularly the nature and extent of any alcohol-related problems.

*High level s.155 analysis – do we need a bylaw, is there a significant problem?*

42. Christchurch, as with any other city in New Zealand, experiences the negative impacts of alcohol. These can impact widely on our communities. As mentioned previously in this report, liquor control bylaws are one tool of many to tackle alcohol-related harm. The Police indicate that these bylaws provide an effective early intervention tool to manage the potential downstream effects of alcohol consumption in public places, and are particularly useful for removing potential offenders or victims from hotspot areas, therefore preventing escalation.
43. Christchurch already has five areas in which liquor bans are in place. Police advice suggests that these bans are largely effective in these areas, and that removing the bans may well result in an increase in crime and injuries. Police crime statistics have been provided for both the existing areas and the proposed new areas in the attached area assessments. Some information has been included below on the limitations of such data.
44. Of the 73 territorial local authorities in New Zealand, all but ten have some form of liquor control bylaw. All sixteen of the metropolitan/city councils have some form of liquor control bylaw.

*Temporary Alcohol Ban Areas*

45. The proposed Bylaw provides the Council with the power to put Temporary Alcohol Ban Areas in place, by resolution, in order to control anticipated or potential negative alcohol-related behaviour associated with specified events or specified dates.
46. While the Act requires a section 155 analysis when developing a bylaw, no such analysis is specified for decisions made under a bylaw, such as a resolution putting temporary alcohol ban areas in place. Though a section 155 analysis is not required, the normal decision-making requirements under the Act apply (these are set out in sections 77-82 of the Act). Through applying normal local government decision-making requirements, the analysis required may well be similar to the first steps in a section 155 analysis, that is, establishing whether there is a significant problem, and if so, whether a bylaw/use of the bylaw discretionary power is the most appropriate way of addressing any identified problems.
47. In order to ensure appropriate matters are considered in relation to a resolution putting a Temporary Alcohol Ban Area in place, the proposed Bylaw sets out some criteria, including:
- (a) the nature of the expected event, including the number of people expected to attend; the history of the event; the area in which the event is being held;
  - (b) the nature and history of alcohol-related problems usually associated with the area;
  - (c) whether the Police support the proposed Temporary Alcohol Ban.

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<sup>11</sup> Section 155 of the LGA02 requires local authorities to determine that the proposed bylaw: is the most appropriate way of addressing the perceived problems; is in an appropriate form; and is not inconsistent with the New Zealand Bill of Rights Act 1990

## 1 Cont'd

48. Additionally, and in relation to the latter parts of the section 155 analysis (relating to the New Zealand Bill of Rights Act 1990), some examination of the costs and benefits of restricting people's behaviour/rights should be undertaken. As such, the proposed Bylaw requires that the following be examined when considering a resolution:
- (a) whether the benefits to local residents and to the city would outweigh the restrictions the resolution would impose on local residents and other people, including those who may be attending any events, in the area covered by resolution.

*Restrictions and exemptions*

49. The restrictions in the proposed Bylaw that will apply in Alcohol Ban Areas are provided for in section 147 of the Act.<sup>12</sup> In addition to the exemptions that are also provided in section 147(3) of the Act (largely relating to transporting alcohol in or through ban areas), it is considered appropriate for further exemptions to be clearly specified in the Bylaw. The proposed new exemptions<sup>13</sup> make it clear that where various situations exist that are covered by or associated with a licence issued under the Sale of Liquor Act 1989, the Bylaw would not apply. This is because the Sale of Liquor Act already places regulatory controls on areas or activities covered by such licenses that are aimed at "contributing to the reduction of liquor abuse".<sup>14</sup>

*Police powers*

50. Bylaws made under the Act for "liquor control purposes" give the Police the power to seize alcohol, to search people or vehicles (in certain situations), and to arrest people for breaching such bylaws. This gives the Police additional powers to those which they would normally have under other legislation, and as such, requires some consideration.
51. The Police enforce liquor ban bylaws all over New Zealand, and have organisational guidelines in place. After 2002, when the then new Local Government Act enabled councils to make bylaws for liquor control purposes for the first time, Police national guidance on enforcing such bylaws was provided to Officers, who were advised that: "The powers available to Police under these provisions must be exercised responsibly and discretion should be used where appropriate".<sup>15</sup>
52. An example of Police guidelines is contained in the 2005 article "Banning the Bottle", which contains an excerpt from Police guidance for enforcing the Auckland City bylaw. It states:
- Discretion is to be used at all times. If a person who is in breach of the ban complies with directions to either dispose of the liquor or move outside the prohibited area, then a warning is appropriate... [The Bylaw] is intended to police those who indicate by their conduct or demeanour that they are likely to intimidate others or lead to some form of disorder.*<sup>16</sup>
53. If there are any concerns about the way in which the Police are enforcing a liquor control bylaw, as with any Police conduct, these can be addressed through appropriate channels such as the Independent Police Conduct Authority. Additionally, concerns could be raised by defence counsel if charges were being brought. There is no known history of complaints about the way in which the Police are enforcing the current bylaws in the Christchurch City Council district.<sup>17</sup>

<sup>12</sup> As mentioned previously, these restrictions relate to "prohibiting or otherwise regulating or controlling" the consumption, bringing into or possession of alcohol in public places, including in vehicles in public places.

<sup>13</sup> In both of the existing bylaws there are already some exclusions (as well as those in section 147), but they do not extend to all potential situations, which may give rise to some doubt as to whether or not the bylaw should apply (see paragraph 2 of the schedule to the CCC bylaw, and the definition of 'specified place' in the BPDC bylaw).

<sup>14</sup> The purpose of the Sale of Liquor Act 1989 is "to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means".

<sup>15</sup> New Zealand Police, *Ten-One*, No 249, 30 May 2002, p 15, cited in "Banning the bottle: Liquor bans in New Zealand", Grenfell M, Marriott-Lloyd P, Webb M, (2005).

<sup>16</sup> Cited in "Banning the bottle: Liquor bans in New Zealand", Grenfell M, Marriott-Lloyd P, Webb M, (2005), p. 4-5

<sup>17</sup> The Police advised that they do not have a record of complaints, and that there is no known history of complaints arising in relation to the current liquor ban areas. The issue was also discussed with the Canterbury Community Law Centre, and though they had cases in relation to young people who had breached the ban, they did not believe there was a significant problem in relation to the use of Police powers or discretion.

## 1 Cont'd

54. A more specific aspect of Police powers is the power provided in section 170(2) and (3) of the Act which, in practice, allows the Council to give the Police powers of immediate search when putting a temporary Alcohol Ban Area in place. If the Council wants to activate this provision, the resolution putting the temporary Alcohol Ban Area in place must state so, and the Council must then comply with section 170(3) of the Act, in terms of signage and public notice requirements.

*Signage – enforcement and compliance*

55. The Act largely remains silent on the issue of signage for bylaws made for liquor control purposes. The one exception is the power mentioned above, which is very specific and would only apply to temporary Alcohol Ban areas, where stated.
56. Therefore, signage is an operational issue. There are strong arguments that signage should be in place where practical, as without signage a person would not necessarily know that alcohol restrictions are in place. Signage is important for both enforcement (ie to manage the possibility of “not knowing” as a defence) and to encourage compliance (ie if people know there is a ban they are more likely to comply with it).

*Under-age drinking*

57. Bylaws made for “liquor control purposes” are sometimes implemented to address perceived problems of young people consuming alcohol; however, it should be noted that the Summary Offences Act 1981 makes it an offence for anyone under 18 years of age (who is unaccompanied by their parent or legal guardian), to drink alcohol in a public place, or have to alcohol in their possession in a public place.<sup>18</sup> If a young person is found to be breaching this provision they can be issued with an infringement notice (instant fine) by the Police.

*Other tools for addressing the problem*

58. As with any bylaw review, other tools for addressing the problem should be examined. It may be that this type of bylaw is not the *most appropriate tool* for addressing the identified problem(s). The other tools available for addressing the problem(s) will be different for each of the ten areas that the Alcohol Policy and Liquor Control Bylaw Subcommittee agreed staff undertake further analysis on. The attachment for each area assessment contains information describing the problem(s) particular to each area, be it ‘boy racer’ activities, the combination of food, alcohol and entertainment venues creating a congregation point, youth drinking, etc.
59. Additionally, it should be acknowledged that the scope of the bylaw-making power provided in the Act is narrow (possession, consumption and carriage of alcohol, in public places, that are under the control of the Council, and open to the public) and therefore the use of the bylaw is limited by the bylaw-making power’s narrow scope.
60. As mentioned previously, there are many other initiatives underway in Christchurch to help to achieve the same outcomes sought by the proposed Bylaw (ie reducing alcohol-related harm, damage, disorder and crime and improving community safety). This type of bylaw should be thought of as a piece of the puzzle, not as a complete solution.
61. Other tools for addressing related problems may include:
- (a) increased compliance monitoring or enforcement under the Sale of Liquor Act 1989 (eg in relation to intoxication, under-age purchases or ‘bar-hopping’ with drinks)
  - (b) using s.38(3) of the Summary Offences Act 1981 to combat under-age drinking in public places
  - (c) dedicating Police resources to particular problems eg ‘boy racer’ activities and using existing legislation
  - (d) using Crime Prevention Through Environmental Design (CPTED) eg crime cameras and lighting
  - (e) more recycling bins for glass bottles or more rubbish bins.

<sup>18</sup> Section 38(3) of the Summary Offences Act 1981

1 Cont'd

62. While there is other legislation available to Police to deal with disorder and some alcohol-related offending, alcohol bans provide an opportunity to remove potential offenders and/or victims from a location before incidents escalate. In this sense, alcohol bans can be employed as an effective crime prevention tool, and for this reason the proposed Bylaw is considered to meet the test in section 155(1) of the Act; it is a most appropriate way to meet these problems.

*Form of bylaw and Bill of Rights Act implications*

63. The form of the proposed Bylaw is considered appropriate, but can be tested further through public consultation.
64. As with many regulatory controls that limit the ability of people to do certain things and/or go certain places, this may have an implication on rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). However, section 5 of the NZBORA provides that "...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." The Council can therefore limit NZBORA rights if such a limitation is "demonstrably justified".
65. An analysis of whether such a limitation is "demonstrably justified" will involve considerations such as:
- (a) Does the limit have a significant and important objective? – the limitation should serve a significant and important function to warrant overriding a constitutionally protected right.
  - (b) Is the limit rational and proportionate? – there should be a rational and proportionate connection between the law limiting the right and the reason for the limitation. The measures adopted should impair the right as little as possible.
66. The possible rights in the NZBORA that might be affected by a liquor control bylaw include freedom of movement (section 18), and possibly freedom from discrimination (section 19). The right to freedom from unreasonable search and seizure (section 21) may be regarded as affected, but although a bylaw may increase the possibility that unreasonable search and seizure could take place, this is a matter within the control of the Police, and the bylaw itself is not necessarily inconsistent with that right.
67. Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand. The laws of New Zealand do not make it illegal to consume or possess alcohol in public places (except for those under 18), so a restriction on where people can go and consume or possess alcohol, in public places, will be a partial restriction on freedom of movement. However, a bylaw that does not prohibit this activity completely in every public place, and provides a rationale for why there is a ban in certain places will be a demonstrably justified limit in a free and democratic society.
68. There was an argument raised in a recent case (Ngeru v Police) that a liquor ban bylaw might be indirect discrimination against homeless alcoholics, but it did not succeed in that case and, when a bylaw only provides for a limited number of ban areas, there is also not likely to be any inconsistency with the NZBORA.

**Police view about liquor control bylaws**

69. Liquor bans are an important tool for reducing alcohol-related harm, but can only be effective if they are strictly and consistently enforced. One of the key benefits for Police is that people who breach the liquor bans can be arrested and removed from hotspots before problems arise, thus helping to minimise alcohol-related crime and disorder. Police can use this tool to remove aggressive or vulnerable people from hotspot locations.

1 Cont'd

70. While this tool provides Police with the ability to remove potential offenders and/or victims from the streets at high risk times, it also removes the Police Officer from the street and reduces Police visibility. Enforcement of liquor ban bylaws depends on Police resources and priorities.
71. For a crime to occur, three elements have to be present: ability, motivation and opportunity. Eliminate any one of these and the crime will not occur. If the Police can effect early intervention by removing alcohol from the public environment, the opportunity for disorder, violence, anti-social behaviour and littering will be greatly reduced.
72. It is important to realise the limitations of liquor bans. They are a proactive policing tool, but they require a heavy investment of Police resources. They are also of limited value unless they are supported by additional strategies that address intoxication and drinking behaviours. Liquor bans are also limited in that they can potentially stop drinking in public places, but they cannot stop intoxication.

**Data/evidence limitations**

73. It is difficult to separate the impact of increased Police resources and targeted Police operations from the impact of liquor control bylaws. New Zealand researchers Webb *et al* state: "It is difficult to disentangle the independent effects of Police enforcement of a liquor ban from other initiatives which, in a comprehensive crime prevention and community safety strategy, are likely to have mutually-reinforcing effects on one another".<sup>19</sup>
74. As such, isolating positive impacts solely attributable to our existing liquor control bylaw areas has proved difficult. Police advice suggests that removing the existing alcohol ban areas (with the exception of the Spencer Park New Year's Eve ban) would result in an increase of crime and disorder. Crime statistics for the existing ban areas, including statistics on liquor ban breaches, have been included in each area assessment in the attachments to this report.
75. As well as difficulties in separating the impacts of our current liquor ban areas from the impacts of changing Police priorities and resources, it is also difficult to separate data relating to alcohol generally from data relating specifically to alcohol consumption *in public places*, which is what a bylaw could cover.
76. A further issue, relating to both the existing and proposed new areas, is the different nature of the ban areas. Potential ban areas are not necessarily comparable across all types of data/evidence. For example, some areas may represent problem areas because they are a 'boy racer' corridor, a holiday destination (for example, on New Year's Eve), or because they have a concentration of licensed premises, late night eating establishments and entertainment venues which draw people to the area. The nature of each potential ban area is different, and the evidence to justify seeking a ban will therefore vary and may not be directly comparable.
77. As well as Police data, Council data has been utilised through the Request for Service (RFS) system. However, RFS data records complaints, not actual events or incidents, so does not represent a true reflection of the extent of any problems. Additionally, there is no information which links the complaints to alcohol consumed in public places, or indeed to alcohol generally.

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<sup>19</sup> Webb, M; Marriot-Lloyd, P; Grenfell, M. *Banning the bottle: Liquor bans in New Zealand*. (2004).

## 1 Cont'd

**Other alcohol-related initiatives**

78. Evidence suggests that liquor bans are most effective when introduced alongside a range of other initiatives. As mentioned previously in this report, there are a range of other CCC initiatives underway, including:
- (a) the Safer Christchurch Strategy<sup>20</sup>
  - (b) the Alcohol Accord<sup>21</sup>
  - (c) the Transport Accord<sup>22</sup>
  - (d) recent funding for the Safe City Officer Programme and crime prevention cameras;
  - (e) Christchurch's designation as an International Safe City<sup>23</sup>
  - (f) the upcoming review of our Alcohol Policy (which relates to liquor licensing)<sup>24</sup>
  - (g) the ongoing work of our Liquor Licensing Team, working in conjunction with the Police and Community and Public Health to apply the Sale of Liquor Act 1989.
79. Many other initiatives are happening at a national level. Together, these approaches work at different levels to complement each other and to address different aspects of alcohol-related harm in our communities. For example, in March 2006, the Government adopted the New Zealand Police Alcohol Action Plan which sets out a commitment by the Police to work in partnership to prevent and reduce alcohol-related crime, and ultimately to reduce alcohol-related harm.<sup>25</sup> The Action Plan states (in relation to managing alcohol at events and during holidays, but applicable generally in relation to bylaws):

*Police's proactive emphasis on compliance with liquor ban by-laws will also continue. Although the vast majority of liquor ban breaches are resolved by a warning or caution, the power of arrest and detention is particularly important ... The power to 'nip trouble in the bud' and remove people who are intent on flouting liquor bans is an important way Police Officers can maintain a safe environment for everyone to enjoy ...*<sup>26</sup>

**THE OBJECTIVES**

80. The purpose of the proposed Bylaw is to reduce alcohol-related harm, damage, disorder and crime and to improve community safety by putting alcohol restrictions in some public places within the Christchurch City Council district.

**THE OPTIONS**

81. In reviewing the existing two bylaws, the Christchurch City Liquor Control Bylaw 2004 and part 2, Liquor Control in Public Places, of the Banks Peninsula District Council Public Places and Signs Bylaw 2004, the options are:
- (a) Option one: Status quo, retain the two bylaws and the coverage of the ban areas
  - (b) Option two: Revoke the two bylaws and no longer have a bylaw for liquor control purposes
  - (c) Option three: Revoke the two bylaws and create an updated bylaw with updated ban areas.

<sup>20</sup> The Safer Christchurch Strategy gives a unified approach to crime prevention, injury prevention and road safety. The Strategy brings together the work of government agencies and community organisations whose focus is on creating a safer Christchurch and sets out a wide range of actions and targets for the city's safety and crime prevention agencies.

<sup>21</sup> In October 2006, more than 50 bars in the central business district formed the Alcohol Accord in partnership with the Council, New Zealand Police, Community and Public Health and the Hospitality Association.

<sup>22</sup> In May 2008, the Central Business District Transport Accord was launched. Christchurch's taxi operators and Red Bus Company formed the Transport Accord in partnership with the Council, New Zealand Transport Agency, New Zealand Police, Hospitality Association, Environment Canterbury, Automobile Association, Taxi Federation and ACC.

<sup>23</sup> In June 2008, the Council agreed to triple the number of extra crime prevention cameras and to fund the Safe City Officer programme to help reduce crime in the central city area and to improve perceptions of crime and safety in the city.

<sup>24</sup> The Council's Alcohol Policy, which covers some aspects of liquor licensing in the district, is due to be reviewed later in 2009. This will provide the Council the opportunity to address a range of concerns relating to licensed premises, including opening hours. The policy relates to matters covered by the Sale of Liquor Act 1989.

<sup>25</sup> New Zealand Police, *New Zealand Police Alcohol Action Plan* (2006), <http://www.police.govt.nz/resources/2006/alcohol-action-plan/alcohol-action-plan.html>

<sup>26</sup> New Zealand Police, *New Zealand Police Alcohol Action Plan* (2006), <http://www.police.govt.nz/resources/2006/alcohol-action-plan/alcohol-action-plan.html>

**1 Cont'd**

**Option 1**

82. Option 1, status quo, retain the two bylaws and the coverage of the ban areas, is not the preferred option, as it would not reflect the amalgamation of the Christchurch City Council and the Banks Peninsula District Council, and the ban areas in the two bylaws need to be updated to reflect the current context, which has changed since the two bylaws were made in 2004.

**Option 2**

83. Option 2, revoke the bylaws and no longer have a bylaw for liquor control purposes, is not the preferred option, as liquor control bylaws provide a valuable early intervention tool for the Police to manage the potential downstream effects of alcohol consumption in public places. Liquor control bylaws can prevent alcohol-related harm in our communities and contribute to a number of Council goals, including the LTCCP strategic direction: working with partners to reduce crime, help people avoid injury and help people feel safer.<sup>27</sup>

**Option 3**

84. Option 3, revoke the two bylaws and create an updated bylaw with updated ban areas, is the preferred option.

**PREFERRED OPTION**

**Option 3**

85. Option 3 is the preferred option as it:
- (a) provides a single bylaw to cover the whole district
  - (b) allows improvements to be made to the operation and functionality of the bylaw itself, and
  - (c) updates the ban areas to reflect the current context.
86. As bylaws have come up for review since the amalgamation of the Banks Peninsula District Council and the Christchurch City Council, the Council has been replacing the separate bylaws from the two old jurisdictions with updated, single bylaws that cover the whole of the new district. It is appropriate to do the same for the two bylaws covering liquor control matters.
87. Since the two bylaws were first made over four years ago, the drafting and application of liquor ban bylaws has evolved nationally. It is appropriate therefore, to reflect these changes in the new bylaw to improve the operation and functionality of the bylaw itself. Some examples are:
- (a) clarity that the bylaw applies to alcohol consumed in vehicles in liquor ban areas
  - (b) including criteria in bylaws around decision-making for putting temporary bans in place
  - (c) clarifying what can be done by resolution and what has to comply with sections 83 and 86 of the LGA (that is, undertaking the Special Consultative Procedure), and
  - (d) aligning the drafting style and standard clauses in the bylaw with the rest of the new CCC bylaws.
88. The two bylaws were made in 2004 and the city's alcohol issues have changed over that time. New issues have emerged and problems have shifted or altered. Police resourcing and priorities have changed. It is appropriate, therefore, to review the areas covered by the bans and to consider removing or altering these, and to consider adding new areas where problems have been identified.

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<sup>27</sup> Our Community Plan 2006-2016, Volume 1, p.60

## 1 Cont'd

## ASSESSMENT OF OPTIONS

## The Preferred Option

89. Option 3 - Revoke the two bylaws and create an updated bylaw with updated ban areas.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>▪ potential to reduce alcohol-related harm</li> <li>▪ contributes to a safer city</li> </ul>	<ul style="list-style-type: none"> <li>▪ restricts freedoms</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>▪ improve negative drinking culture</li> <li>▪ reduce the culture of fear/negative perceptions of safety</li> </ul>	<ul style="list-style-type: none"> <li>▪ n/a</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>▪ potential to reduce the amount of glass bottles, broken glass and litter on our streets and in our parks</li> </ul>	<ul style="list-style-type: none"> <li>▪ signage – amenity costs</li> </ul>
<b>Economic</b>	Potential to: <ul style="list-style-type: none"> <li>▪ increase perceptions of safety and to increase business activity</li> <li>▪ reduce damage, vandalism, etc</li> <li>▪ positively impact on tourism</li> </ul>	<ul style="list-style-type: none"> <li>▪ may impact on off-licence sales within Alcohol Free Areas</li> </ul>
<p><b>Extent to which community outcomes are achieved:</b></p> <p><i>A Safe City: We live free from crime, violence, abuse and injury. Rates of crime and injury decline.</i></p> <p><i>A Prosperous City: We have a strong economy that is based on a range of successful and innovative businesses. Christchurch has a strong, healthy economy.</i></p> <p><i>A Healthy City: We live long, healthy and happy lives. Our city environment supports the health of the community.</i></p> <p><i>An Attractive and Well Designed City: Christchurch has a vibrant centre, attractive neighbourhoods and well-designed transport networks. Christchurch is attractive and well maintained.</i></p> <p>Option 3 would contribute to these four community outcomes – in both real and imagined terms. The Alcohol Free Areas put in place through the proposed Bylaw may contribute to perceptions of safety and have the potential to reduce alcohol-related harm. Alcohol Free Areas are not a complete solution to alcohol-related issues, but they are part of a wider, multi-faceted approach to managing or reducing alcohol-related harm.</p> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>The Act gives the Police special enforcement powers for bylaws made for "liquor control purposes". Enforcement for this bylaw is a matter for the Police, rather than the Council.</p> <p>There will be some costs to Council in relation to publicising the Alcohol-free Areas on an ongoing basis and ensuring adequate signage is in place.</p> <p><b>Effects on Maori:</b></p> <p>Similar to other ethnic groups.</p> <p><b>Consistency with existing Council policies:</b></p> <p><i>Alcohol-related Harm At Public Events - Policy To Reduce (22 February 2001) – This policy contributes to reducing alcohol-related harm at outdoor events and requires effective joint planning between event organisers/promoters and key stakeholder groups to reduce alcohol-related harm or to care for people affected by alcohol.</i></p>		



1 Cont'd

*Alcohol Policy* (29 July 2004) – This policy expresses support for the implementation of liquor ban bylaws.

Other related Council initiatives include: the Safer Christchurch Strategy; the Alcohol Accord; the Transport Accord; recent funding for the Safe City Officer Programme and crime prevention cameras; our designation as an International Safe City; the upcoming review of our Alcohol Policy (which relates to liquor licensing); and the ongoing work of our Liquor Licensing Team, working in conjunction with the Police and Community and Public Health.

Other related initiatives include: the New Zealand Police Alcohol Action Plan, which endorses liquor bans as a useful policing tool to address alcohol-related harm.

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

**The Act gives the Police special enforcement powers for bylaws made for “liquor control purposes”, so a partnership approach has been taken with the Police in the development of the draft bylaw. Additionally, the need for Alcohol Free Areas or the evaluation of current areas largely relies on evidence provided by the Police, such as crime statistics or enforcement statistics relating to the current liquor ban areas. The views and preferences of the public can be ascertained through the special consultative procedure on this proposal.**

**Other Options**

90. Option 1 - status quo, retain the two bylaws and the coverage of the ban areas

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	As above	As above
<b>Cultural</b>	As above	As above
<b>Environmental</b>	As above	As above
<b>Economic</b>	As above	As above

**Extent to which community outcomes are achieved:**

As above, but if the ban areas are not updated to reflect the current situation, community outcomes will have less chance of being achieved (a Safe City, a Prosperous City, a Health City) .

**Impact on the Council's capacity and responsibilities:**

As above.

**Effects on Maori:**

As above.

**Consistency with existing Council policies:**

As above.

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

As above. The Police have indicated that the current areas are not, in all cases, reflective of current issues. The Police have been working closely with staff on the review of the current bylaws, and have recommended a number of changes to the areas covered, and to the content of the bylaw itself. As the retention of the current bylaws would still need to be the subject of a special consultative procedure the views of the public would be ascertained as part of that process.

## 1 Cont'd

91. Option 2 - Revoke the bylaws and no longer have a bylaw for liquor control purposes

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>▪ would allow increased freedom, rather than restrictions</li> </ul>	<ul style="list-style-type: none"> <li>▪ potential to increase alcohol-related harm and result in a city which is, or is perceived as, less safe</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>▪ n/a</li> </ul>	<ul style="list-style-type: none"> <li>▪ may contribute to negative drinking culture</li> <li>▪ may increase the culture of fear/negative perceptions of safety</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>▪ less signage</li> </ul>	<ul style="list-style-type: none"> <li>▪ potential to increase the amount of glass bottles, broken glass and litter on our streets and in our parks</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>▪ may increase off-licence sales</li> </ul>	Potential to: <ul style="list-style-type: none"> <li>▪ reduce perceptions of safety and to reduce business activity</li> <li>▪ increase damage, vandalism</li> <li>▪ negatively impact on tourism</li> </ul>
<p><b>Extent to which community outcomes are achieved:</b></p> <p>Not having a bylaw for liquor control purposes could negatively impact on safer city initiatives and perceptions.</p> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>Not having a bylaw for liquor control purposes could increase the need for dealing with alcohol-related harm – to people, the environment and to property (including city streets).</p> <p><b>Effects on Maori:</b></p> <p>As above</p> <p><b>Consistency with existing Council policies:</b></p> <p>Not having a bylaw for liquor control purposes would not be consistent with some Council strategies, policies or other initiatives, such as: the Safer Christchurch Strategy; the Alcohol Accord; the Transport Accord; recent funding for the Safe City Officer Programme and crime prevention cameras; our designation as an International Safe City; the upcoming review of our Alcohol Policy (which relates to liquor licensing); and the ongoing work of our Liquor Licensing Team, working in conjunction with the Police and Community and Public Health.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>The Police have indicated that liquor control bylaws provide a valuable early intervention tool to manage the potential downstream effects of alcohol consumption in public places, and can prevent alcohol-related harm in our communities. As the revocation of the bylaws would still need to be the subject of a special consultative procedure the views of the public would be ascertained as part of that process.</p> <p><b>Other comments:</b></p> <p>Of the 73 territorial local authorities in New Zealand, all but ten have some form of liquor control bylaw. All of the sixteen city councils have some form of liquor control bylaw.</p>		

## 2. OPERATIONAL POLICES – HEAVY VEHICLE PARKING IN A RESIDENTIAL AREA AND PROHIBITED TIMES ON ROADS

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941-8608
<b>Officer responsible:</b>	Transport and Greenspace Manager
<b>Author:</b>	Patricia Su, Network Operations and Transport Systems

### PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's approval to adopt two new operational policies relating to the Christchurch City Council Traffic and Parking Bylaw 2008. The two operational policies are: *Heavy Vehicle Parking in a Residential Area* and *Prohibited Times on Roads*. See **Attachment 1** and **Attachment 3**, respectively.

### EXECUTIVE SUMMARY

2. The Christchurch City Council Traffic & Parking Bylaw 2008 (the Bylaw) was adopted on 19 June 2008 and came into force on 1 July 2008. At the time the Bylaw was adopted, there were a number of other recommendations that were made by the Hearing Panel which included preparing operational policies for the clauses relating to 'heavy vehicle parking in a residential area' and 'prohibited times on roads'. The following resolutions were made by the Council:
  - (a) *Direct staff to prepare an operational policy relating to the clause 'heavy vehicle parking on residential streets' in the Traffic and Parking Bylaw, including setting out the process and matters to be taken into consideration in decision-making.*
  - (b) *Direct staff to prepare an operational policy relating to the clause 'prohibited times on roads' in the Traffic and Parking Bylaw, including setting out the process and matters to be taken into consideration in decision-making*

#### **Heavy vehicle parking in a residential area**

3. The clause relating to restricting heavy vehicle parking in a residential area was first introduced and adopted by the Council on 19 June 2008, which came into force on 1 July 2008 through the bylaw review process that was required under the Local Government Act 2002. This newly introduced provision in the Bylaw allows the Council to prohibit by resolution heavy vehicle parking on a particular street, in a residential area, at a specified time. The restriction is subject to the Council installing the prescribed signs, as is required by the Transport Act 1962 and its associated regulations.
4. An operational policy will ensure that there is a transparent process in place and consistency when applying this provision. The process includes consultation with the transport industry as it may be able to achieve willing compliance with its members, without the Council having to impose a restriction. Currently, there are not streets which have a heavy vehicle parking restriction on it but a register has been developed for future use. See **Attachment 2**.

#### **Prohibited times on roads**

5. The clause relating to prohibiting motor vehicles weighing less than 3,500 kilograms on specified roads during certain times was first introduced and adopted by the Council on 28 June 2001 through an amendment to the Council's Traffic and Parking Bylaw 1991. The clause was aimed at restricting car enthusiasts (including spectators) from congregating on the road and causing a nuisance to the adjacent residents. See **Attachment 4** for the Prohibited Times on Roads Register which contains the roads where there is a prohibition on motor vehicles weighing less than 3,500 kilograms.

**2 Cont'd**

6. There are concerns raised that the "boy racer/street racing" provision in the Bylaw impinges on the New Zealand Bill of Rights Act 1990. This issue was investigated and a legal opinion was obtained in August 2007 from Simpson Grierson (see **Attachment 5**). The legal advice notes that there is good argument that the benefits to local residents, the temporal and other exceptions to the limitation, and the degree of harm the bylaw is seeking to prevent combine to make the bylaw reasonable. However, it is noted that this is not beyond doubt.
7. With an operational policy in place, it will provide the Council and staff the limitations of imposing the restriction and also the considerations that need to be taken into account to ensure that whatever decision is made, that it is reasonable and robust. This will also assist the community in understanding the process and criteria used when determining whether a street will have a prohibition on vehicles under 3,500 kilograms.

**FINANCIAL IMPLICATIONS**

8. There are no financial implications involve in establishing an operational policy.
9. The financial implications arising from each decision will form part of the consideration of whether or not to pursue the restrictions and will be addressed in each report, for example, signage requirement.

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

10. See above.

**LEGAL CONSIDERATIONS**

11. Clause 10 of the Christchurch City Council Traffic and Parking Bylaw 2008 provides the Council with the authority to prohibit heavy motor vehicles parking on a specified road in a residential area during the specified time, by resolution. Clause 10 also requires the Council to erect the prescribed signs.
12. Clause 15 of the Christchurch City Council Traffic and Parking Bylaw 2008 provides the Council with the authority to prohibit motor vehicles weighing less than 3,500 kilograms from using a specified road at specified times, by resolution. Clause 15 also requires the Council to erect signs on the road describing the restriction.
13. A legal opinion was obtained from Simpson Grierson in August 2007 regarding the legality of the prohibited times on roads clause. See **Attachment 5**. The advice considered the implication of this provision in light of the New Zealand Bill of Rights Act 1990.
14. The legal advice notes that whether or not the limits are reasonable would depend on whether the limit is proportional to the objective. The case law on reasonableness indicates that the courts will carefully scrutinise bylaws that impact on the rights of the general public. Against this, a court will weigh the benefits to the locality, and the significance of the harm that the bylaw is seeking to prevent.
15. The legal advice concludes that while the matter is not beyond doubt, there is a good argument that the benefits to local residents, the temporal and other exceptions to the limitation, and the degree of harm the bylaw is seeking to prevent combine to make the bylaw reasonable and subsequently not repugnant to the general laws of New Zealand. This would also relate to the reasonableness of the decision that Council makes using this clause.
16. Any report to the Council seeking to impose such restrictions will have to address the above issues.

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

17. As above.

2 Cont'd

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

18. N/A.

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

19. N/A.

**ALIGNMENT WITH STRATEGIES**

20. N/A.

**Do the recommendations align with the Council's strategies?**

21. As above.

**CONSULTATION FULFILMENT**

22. This report was requested by the Regulatory and Planning Committee as a result of the special consultative procedure that was carried out for the Christchurch City Council Traffic and Parking Bylaw 2008.

23. During the Special Consultative Procedure for the Traffic and Parking Bylaw review, there were a number of submissions received enquiring about how a "Register" would work. This indicates that some submitters support the development of operational policies to ensure that there is a process set down and followed when making any future decisions.

**STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Adopt the attached "Operational Policy – Heavy Vehicle Parking in a Residential Area" that sets out the framework for assessing and processing requests for roads to be added to the "Heavy Vehicle Parking in a Residential Area Register".
- (b) Adopt the attached "Operational Policy – Prohibited Times on Roads" that sets out the framework for assessing and processing requests for roads to be added to the "Prohibited Times on Roads Register".

**COMMITTEE RECOMMENDATION**

It is recommended that the staff recommendation be adopted.

The Committee **decided** to update Community Boards on the amended operational policies at the November 2008 Community Board Chairpersons' meeting.

**3. REVIEW OF CHRISTCHURCH CITY BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004**

<b>General Manager responsible:</b>	General Manager Strategy and Planning, DDI 941-8281
<b>Officer responsible:</b>	Programme Manager Strong Communities
<b>Authors:</b>	Terence Moody and Paul Cottam

**PURPOSE OF REPORT**

1. To consider a review of the Christchurch City Brothels (Location and Signage) Bylaw 2004 as required by the Local Government Act 2002 (the Act) and decide whether a section 155 analysis indicates a bylaw is required.

**EXECUTIVE SUMMARY**

2. The Prostitution Reform Act 2003 (the Act) provides for territorial authorities to make bylaws regulating the location of brothels and prohibiting or regulating signage in, or visible from, a public place that advertises commercial sexual services.<sup>28</sup> The Council decided, on the basis of limited evidence of problems caused by such activities, but as a precautionary approach, to introduce a bylaw covering both of the above issues in 2004. However, a judicial review in 2005 determined that the location provisions within the bylaw were unreasonable and those provisions were quashed. The provisions regarding signage were not appealed, hence they remain in force.
3. On the basis of over four years' experience with the bylaw, and over three years since the location requirements were quashed, there have been limited problems with either locations of brothels or with signage. In the latter case, there has been only one complaint received in the four years since the introduction of the bylaw. The signage provision in the bylaw currently prohibits signs from most parts of the city except limited inner city areas. There have been no problems with such signs and any problems would have been able to be dealt with under provisions of the City Plan. The current bylaw only covers the former Christchurch City Council area, having been made prior to the amalgamation with Banks Peninsula District Council. Banks Peninsula District Council did not have a similar bylaw controlling location and signage. Nor have any issues been raised regarding brothels in that area.
4. The fears expressed by some persons of a significant increase in the activity within the City as a result of the Act coming into force have not been realised, and this is supported by the recent report of the Prostitution Law Reform Review Committee (PLRRC).<sup>29 30</sup> The report indicates that there has been a slight reduction in persons working in businesses of prostitution, or as managed sex workers, and relatively stable activity overall. There is no evidence of any significant problems to support the need for regulatory controls over the location of brothels. There are provisions in the City Plan and the Banks Peninsula District Plan regarding location that would apply to some businesses.
5. Most known businesses of prostitution<sup>31</sup> have existed considerably prior to the introduction of the Act, and concerns raised in some of the submissions at the time of consideration of the bylaw were not apparent prior to that. Even at the time of the introduction of the bylaw there was no evidence provided, or available, of any defined nuisances from such activities.

<sup>28</sup> Section 4(1) of the Prostitution Reform Act 2003 defines these as;

“ commercial sexual services means sexual services that—

(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and

(b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)”

<sup>29</sup> Report of the Prostitution Law Reform Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, Wellington, May 2008

<sup>30</sup> The Review Committee comprised a nun, sex workers, brothel operators, a general practitioner, an academic, a city councillor, a criminologist, a public health official, social workers, representatives of NGOs and a retired policeman.

<sup>31</sup> “business of prostitution means a business of providing, or arranging the providing of, commercial sexual services”, section 4(1) of the Prostitution Reform Act 2003

## 3 Cont'd

6. As pointed out in the background report below, the major issue initially with signage appeared to refer to alleged "offensive" or "sexually explicit" signage that was seen to exist in the city, but those signs were not associated with advertising "commercial sexual services" *per se*. The display of outdoor advertisements are controlled under the provisions of the City Plan in regard to area, height, illumination, relationship to the site, and compliance with the Advertising Standards Authority Code of Practice relating to criteria for offensiveness and decency of advertising<sup>32</sup>. Such rules would appropriately apply to those advertising commercial sexual services as with any other legitimate businesses. The Banks Peninsula District Plan also contains controls over signs but there is no evidence that any businesses of prostitution exist in that area, or if they did they were not considered an issue.
7. Section 155 of the Act requires the Council to consider whether there are problems, and if so, whether a bylaw is the most appropriate tool to deal with any problems. The analysis undertaken has revealed there is no significant evidence for problems caused by the existence of brothels in Christchurch City, either from their location or the signage used, and if any issues arise, they can be controlled under the current provisions of the City Plan.
8. Prostitution and the operation of brothels are legal activities. It is generally considered that restrictions should not be placed on legal activities without evidence of proven nuisance affecting a wide proportion of the public. In the case of both the location of brothels in Christchurch, and the Banks Peninsula area, and signage advertising commercial sexual services in both areas, there is no such evidence of problems and it is concluded that the current bylaw should be revoked. Should it become apparent that, sometime in the future the situation has changed; the matter could again be examined if evidence is available that significant problems exist. In the meantime, in relation to both the location of brothels and signs, the Council can continue to rely on the provisions in both the City Plan and the Banks Peninsula District Plan, in the same way the Council relies on these tools to control the location and signage for any other business.

**FINANCIAL IMPLICATIONS**

9. On the basis of evidence available there are few, if any, nuisance problems caused by the existence of businesses of prostitution or small owner-operated brothels (SOOBs)<sup>33</sup> in Christchurch. This report recommends the revocation of the current bylaw, which must be done by way of a special consultative procedure, just as if Council was making or amending a bylaw, so the costs associated with the special consultative procedure apply. With the proposed revocation of the Bylaw, the expectation is that inspection and enforcement action, if any, would be undertaken through the provisions of the City Plan, rather than the bylaw.
10. Compliance monitoring and enforcement in relation to brothels should not be significantly more than is caused by ensuring compliance with provisions of the City Plan relating to other business activities, without any specific location or signage controls through a bylaw.

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

11. The budgets for the Regulatory Services group of activities in Our Community Plan 2006-2016 Volume 1 Page 149 make general provision for the enforcement of bylaws and the City Plan and investigation of complaints. It is not anticipated that the revocation of this bylaw will significantly impact on such.

<sup>32</sup> Christchurch City Plan, Volume 3, Chapter 10

<sup>33</sup> Small owner-operated brothels are defined in the Act as a brothel—

(a) at which not more than 4 sex workers work; and

(b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel

## 3 Cont'd

## LEGAL CONSIDERATIONS

12. The Act contains bylaw-making powers for Councils. Section 12 provides that a Council can make bylaws prohibiting or regulating signage advertising commercial sexual services that is in or visible from a public place (and the procedure for making such bylaws is the same as for a bylaw made under the Act). However, such bylaws can only be made if the Council is satisfied that the bylaw is necessary to prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or that the signs are incompatible with the existing character or use of an area (section 12(2)).
13. Section 14 provides that the Council “*may make bylaws for its district under section 146<sup>34</sup> of [the Act] for the purpose of regulating the location of brothels*” The Council must also review any bylaws made under section 12<sup>35</sup> or 14<sup>36</sup> of the Act within the timeframes provided in section 158<sup>37</sup> of the Act. Section 160<sup>38</sup> of the Act provides that a bylaw review is done by making the determinations required by section 155.<sup>39</sup> If, following the review, the Council determines that the bylaw should be amended, revoked, or revoked and replaced; it must act under section 156, and use the special consultative procedure to make, amend or revoke a bylaw.
14. The legal considerations in relation to the review of existing bylaws and adoption of a new bylaw largely arise from section 155 of the Act. This sets out the matters that must be determined to decide whether a bylaw is appropriate, as follows:
- (1) *A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
  - (2) *If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—*
    - (a) *is the most appropriate form of bylaw; and*
    - (b) *gives rise to any implications under the New Zealand Bill of Rights Act 1990.*
  - (3) *No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.”*
15. In order to comply with section 155, the Council needs to identify the perceived problem and formally determine that a bylaw is the most appropriate way to deal with the perceived problem, and if so, that the proposed form of bylaw is in the most appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act 1990. If the Council does not satisfy the requirements of section 155 appropriately, then it is at risk of a challenge to its decision by way of a judicial review application. For example, if it did not have sufficient evidence of a problem, or there was a problem but there were other more appropriate ways to deal with it than a bylaw, then the bylaw might be open to challenge. Conversely, if there was evidence of a problem and that a bylaw was the most appropriate way to deal with that problem, but the Council did not make a bylaw, then that decision might also be successfully challenged.
16. The display of outdoor advertisements, such as signs advertising commercial sexual services is controlled under the provisions of the City Plan in regard to area, height, illumination, and relationship to the site. Similar provisions apply under the Banks Peninsula District Plan. Advertising, including signs, must comply with the Advertising Standards Authority Code of Practice relating to criteria for offensiveness and decency of advertising<sup>40</sup>. Such rules would appropriately apply to advertisements for commercial sexual services, the same as they would for any other legitimate businesses.

<sup>34</sup> Section 146(a) of the LGA02 relates to making bylaws for the purpose of regulating various activities

<sup>35</sup> Relating to regulating or prohibiting signage advertising commercial sexual services.

<sup>36</sup> Relating to regulating the location of brothels.

<sup>37</sup> Section 158 of the LGA02 requires bylaws made under the Act not later than 5 years after the bylaw was made if the bylaw was made after 1 July 2003. This applies to the Brothels (Location and Signage) Bylaw 2004.

<sup>38</sup> Section 160 of the LGA02 requires the review under section 158 to be undertaken in accordance with section 155 including identifying the perceived problem to be addressed and whether a bylaw is the appropriate way of addressing the problem.

<sup>39</sup> Note that “a bylaw may be made under section 12 even if, contrary to section 155 (3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.” (section 13 (2) of the Act.

<sup>40</sup> Christchurch City Plan, Volume 3, Chapter 10



3 Cont'd

17. The location of businesses is controlled under the provisions of the City Plan in regard to the rules both for Living zones and Business zones. There is limited scope for a business of prostitution to be established in Living zones because of restrictions on the hours of operation for home activities, the area allowed to be used, and vehicle movement restrictions.<sup>41</sup> In the case of businesses of prostitution in Business zones brothels would not be specifically precluded from being established subject to compliance with the zone standards some of which may limit the scale of such a business, or trigger the resource consent process. That would include having regard to whether *the business of prostitution is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or is incompatible with the existing character or use of the area in which the land is situated.*<sup>42</sup>

**Legal requirements for the special consultative procedure**

18. The special consultative procedure under the Act when revoking a bylaw requires that the Council prepare a statement of proposal that must include:
- (ii) "a statement that the bylaw is to be revoked; and
  - (iii) the reasons for the proposal; and
  - (iv) a report on any relevant determinations by the local authority under section 155".
19. The Act also requires the Council to determine the form of the summary of information. Section 89(c) requires that it be distributed "*as widely as reasonably practicable (in such a manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates)...*" Section 83(e) of the Act also requires the Council to give public notice of the proposal and the consultation being undertaken.
20. Since the revocation of this Bylaw is likely to be a matter of interest throughout the Christchurch City Council district, it is proposed that the summary of information be published through local newspapers, and that this also serve as public notice of the proposal, as required under section 83(e). Copies of the consultation documents will be available from the Civic Offices, and all Council service centres and libraries and on the Council's "Have Your Say" Website.
21. Submissions called for on the proposal will be considered by the Council and any persons wishing to present orally would be heard prior to the final determination being made.

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

22. Yes, as above and in the background section below.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

23. Under the Activity Management Plan provisions for Regulatory Services Enforcement and Inspections one is to *Educate the community in regard to regulatory obligations and enforcement of breaches of the City Plan.*

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<sup>41</sup> Christchurch City Plan, Community Standards for "other activities" in Living Zones includes a maximum floor area of 40m<sup>2</sup>, not more than one fulltime equivalent residing off site may be employed; hours of operation restricted to 50 per week and between 7am to 11pm Monday to Friday and 8am to 11pm Saturday, Sunday and public holidays; vehicle generation is limited to 16 to 50 trips per day; and at least one person engaged in the activity must reside permanently on the site.

<sup>42</sup> Prostitution Reform Act 2003, section 15

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

24. Regulatory Services Enforcement and Inspection: *Investigating and monitoring activities and projects to ensure compliance with the Building Act, Council by-laws and the City Plan, and mitigating any adverse effects on the environment and people. To investigate complaints about nuisances and non-compliance, and assess the potential effects of various activities. Investigating and responding to any situations likely to affect human health or safety, to be objectionable, or to cause a nuisance. Complaints about nuisances are promptly investigated.*<sup>43</sup>

**ALIGNMENT WITH STRATEGIES**

25. There are no specific strategies in relation to this issue.

**Do the recommendations align with the Council's strategies?**

26. See above.

**CONSULTATION FULFILMENT**

27. Briefings covering the Act, the Bylaw, the results of the judicial review of the bylaw, the findings of the PLRRC review, and the results of the initial section 155 analysis were presented to the Brothels Location and Signage Bylaw Subcommittee and a Combined Community Board Seminar.
28. Information was obtained from the Inspections and Enforcement Unit of the perceived extent of problems and whether or not the current legislation under the City Plan was able to be used to control activities where use of the premises failed to meet City Plan rules.
29. Consultation was undertaken with the New Zealand Police who have advised that there was no evidence as to problems associated with the location of brothels, or indeed any nuisances. Where other offences under the Act had been brought to their notice they have taken action. There have been a limited number of these in the city largely related to under 18 year-old persons.
30. Initial discussions have taken place with the local branch of the Prostitutes Collective who advised that, for example, they could see no need for provisions relating to controlling location beyond the powers contained in the City Plan. They were not aware of any problems with signage, as permitted in the bylaw, but considered a need to provide for controls over offensive signage may be necessary. These views were expressed without prejudice.
31. Initial discussions have been held with Crown Public Health representatives, the Salvation Army Outreach programme, and some owners of businesses of prostitution. Further targeted stakeholder consultation with such will be undertaken once some decision has been reached as to the possible way(s) ahead.
32. A draft consultation plan will be prepared once a decision as to the way ahead has been determined. Until that decision has been made details will not be able to be finalised, however, it would include the following matters. Publicity and information are required to ensure:
- Stakeholders are kept up to date with information about the process and changes to the bylaw.
  - All individuals and organisations affected by the proposal are aware of the consultation process and feel they have had the opportunity to make a submission.
  - The Council's consultation process meets both the spirit and letter of the statutory requirements.

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<sup>43</sup> Our Community Plan 2006-2016 Volume 1, pp 144-149

### 3 Cont'd

33. Formal public consultation of any proposal adopted by the Council will then go out for public consultation in accordance with the Special Consultative Procedure (section 83 of the Act). Anyone can make a submission and will be given the opportunity to be heard before a hearing panel.

#### STAFF RECOMMENDATIONS

It is recommended that the Council resolve:

- (a) That it has determined that under the section 155(1) analysis there is not sufficient evidence of a problem that needs to be addressed by way of a bylaw, and even if there is a perceived problem a bylaw is not the most appropriate way to address it because the City Plan or Banks Peninsula District Plan rules sufficiently address any issues relating to location and signage.
- (b) To revoke the Christchurch City Brothels (Location and Signage) Bylaw 2004.
- (c) That staff be instructed to prepare the relevant documents for approval by the Council to commence the Special Consultative Procedure to revoke the bylaw.
- (d) That public notice of the consultation be given in The Press and on the Council's website on ... 2008, and that public notice of the proposal be given in the Christchurch Star newspaper, Akaroa Mail and other community newspapers distributed in the Christchurch area, as close as possible to ... 2008.
- (e) That the period within which written submissions may be made to the Council be between ... 2008 and ... 2008.
- (f) That a hearings panel be appointed to hear submissions, deliberate on those submissions and to report back to the Council on its recommendations.

#### COMMITTEE RECOMMENDATION

It is recommended that the Council:

- (a) Determines that under the section 155(1) analysis, there is not sufficient evidence of a problem in regards the location of brothels that needs to be addressed by way of a bylaw.
- (b) Determines that under the section 155(1) analysis, there is sufficient evidence of a problem in regards signage advertising of commercial sexual services that needs to be addressed by way of a bylaw.
- (c) Consider a new bylaw controlling signage advertising commercial sexual services, in conjunction with the Brothels Location and Signage Subcommittee, for adoption under the provisions of the Prostitution Reform Act 2003, and that once any new bylaw is introduced the current Brothels (Location and Signage) Bylaw 2004 be revoked.

#### BACKGROUND (THE ISSUES)

##### The regulatory context

34. The Act has the purpose of decriminalising prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that:
- (a) *safeguards the human rights of sex workers and protects them from exploitation:*
  - (b) *promotes the welfare and occupational health and safety of sex workers:*
  - (c) *is conducive to public health:*
  - (d) *prohibits the use in prostitution of persons under 18 years of age:*
  - (e) *implements certain other related reforms.*<sup>44</sup>

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<sup>44</sup> The related reforms include removing the offence of soliciting from the Summary Offences Act 1991 and the offence of operating a brothel.

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**Powers to make bylaws**

35. The Act provides some limited powers to territorial authorities to control certain matters in their districts, as follows: There are powers under section 12 to make bylaws prohibiting or regulating signage advertising commercial sexual services that is in or visible from a public place, provided the Council is satisfied that a bylaw is necessary to prevent the display of signs that are likely to cause nuisance or serious offence to the public, or is incompatible with the existing character of an area. There are also powers to make bylaws regulating the location of brothels: section 14 provides that the Council "*may make bylaws for its district under section 146 of [the Act] for the purpose of regulating the location of brothels*". In both cases, the bylaws must be made in accordance with the provisions of the Act, except that in the case of signage: *a bylaw may be made under section 12 even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.*

**Resource consents and district plans**

36. A territorial authority, in considering a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, under the Act must have regard to whether the business of prostitution is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or is incompatible with the existing character or use of the area in which the land is situated. A council may grant or refuse the resource consent or impose conditions on such consent. This provision does not limit or affect the operation of the Resource Management Act in any way and may be overridden by the provisions of a district plan.

**The development of the Brothels (Location and Signage) Bylaw 2004**

37. The Council, shortly following the enactment of the Act, appointed a subcommittee to consider issues perceived to face the Council by the introduction of the Act. The purpose was to identify, through consultation with stakeholders and the public at large, the perceived issues and assess options for addressing those in the most practicable way. The Subcommittee consulted with various stakeholders, including health professionals, the Police, massage parlour operators and the Prostitutes Collective, and sought answers to some specific questions from the public (through a questionnaire) regarding the location of brothels and the issue of signage. Following the five week consultation period, 1500 written submissions were received and considered, including 52 persons who made further oral submissions.
38. The questionnaire responses indicated that of the then massage parlours licensed, 11 were located in the Central Business District, with three in suburban locations. The assumption was made that such premises would be likely to operate as businesses of prostitution. It was then asked whether brothels should only be allowed in certain parts of Christchurch. Sixty per cent of the respondents to the questionnaire considered brothels should only be allowed in the Central Business District or within the four avenues. Despite submissions stating no brothels should be permitted in suburban locations, whether residential or not, there was not a similar level of concern about sole owner-operators working from home, provided suitable signage rules applied. The Subcommittee had little information regarding the distribution of SOOBs in the City, but considered that unless they were only one person brothels, they should operate in the Central City designated zone. Signage requirements were considered by respondents to need to be limited, and only allowed on brothels in the designated zone, with 70 to 80 percent of the submissions believing there should be no signage allowed on suburban or home occupation brothels.

**3 Cont'd**

39. The Subcommittee considered what were several perceived problems that needed to be addressed including; the likelihood of explicit and offensive signage developing; the nuisance effects of brothels; not creating a “red light district” in the city; and keeping brothels away from largely residential areas. These issues will be further addressed in this report as part of the section 155 analysis, but the major concerns regarding “explicit” and “offensive” signage often related to other businesses, rather than to commercial sexual service providers or brothels. Likewise, there was little evidence that then existing massage parlours (if considered to be operating as brothels) had ever caused any nuisance or problems, and as seen below, the Subcommittee accepted that some could operate outside the designated zone on such grounds. One of these was close to a residential area and had operated without problems for a significant number of years. Two cases drawn to the attention of the Subcommittee at the time, of alleged businesses of prostitution in residential buildings, were being dealt with under the City Plan.
40. The Subcommittee identified and assessed three options that could be used for addressing the perceived problems: do nothing; establish new rules in the City Plan; and create a bylaw – as below.

**Option 1: “Do nothing”**

41. It was considered that doing nothing may lead to an increase of brothels throughout the City, with few constraints on locations that may be sensitive to members of the public. The City Plan did not contain provisions specifically restricting activities relating to the business of prostitution which could occur as of right over a large number of business zones similar to any other legal activity. It was considered that while adverse environmental effects may be controllable through the City Plan, some social issues, for example objection to prostitution *per se*, would not. Likewise, the City Plan permitted home-based commercial activities subject to controls on scale and hours of operation, and had done so for a considerable time without any significant problems. The issue of a possible increase in signage, although City Plan rules existed to control this to an extent, was considered to be a matter that also obviated adopting this option.

**Option 2: Establish new rules in the City Plan**

42. The setting of rules in the City Plan specifically for premises operating brothels could be undertaken, provided it survived the tests under section 32 of the Resource Management Act,<sup>45</sup> and the rules could establish a regulatory regime to require and issue resource consents. Given the situation that there was little evidence for adverse effects, either environmental or social, from existing brothels (or perceived brothels) and existing cases of commercial activities in residential areas being able to be dealt with under current Plan rules, the process could be lengthy and costly. Such rules, if introduced, would be subject to existing use rights, meaning that brothels set up while the process was occurring could continue. For the above reasons, this option was rejected.

**Option 3: Create a bylaw**

43. The Act conferred the power on the Council to make bylaws controlling signage, by prohibition or regulation, and regulating the location of brothels. It was noted that while signage could be both prohibited and regulated, location could only be regulated. It is well established that the use of the term “regulating” means that while a bylaw may prohibit an activity in part of a district it cannot do so in the whole of its district. It was considered that signage needed to be controlled to avoid offence to ordinary members of the public and it was determined that some element of prohibition should be introduced. On the basis of the information received through the questionnaire (from about 1500 submissions), it was determined that the option to introduce a bylaw should be selected. The acceptance of this option would mean that no existing use rights would apply, and the rules would be easier to make and administer than those through the City Plan.

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<sup>45</sup> Section 32 of the Resource Management Act 1991 requires an evaluation as to whether any objective is the most appropriate way to achieve the purpose of the Act whether having regard to their efficiency and effectiveness the methods are the most appropriate for achieving the objectives.

## 3 Cont'd

**The coverage of the Brothels (Location and Signage) Bylaw 2004**

44. The Council determined that, largely, brothels should be located within an area in the Central City where commercial activities were undertaken and the majority of massage parlours at that time operated. There was no direct evidence that such premises had been operating as brothels prior to the Act coming into force, nor any evidence that there were problems with the operations of the premises. The Council did permit three premises outside the zone to continue on the basis that they had been operating as massage parlours for some time with no evidence of problems.
45. The signs able to be controlled are those in or visible from a public place and which advertise commercial sexual services (as defined in the Act).<sup>46</sup> Under the bylaw signs may only; be affixed to the premises providing such services; the premises must be in the area designated for such premises (which is within 2 inner city areas, as shown on the First Schedule map); only include the name of the business; the name of the person conducting the business; the number of the property of the premises; and only one sign per building, unless it has more than one street frontage in which case two signs may be permitted. The signs may not display any pictorial image; nor exceed 0.3 square metres in surface area; nor be illuminated by any flashing light.
46. During the hearing of submissions on the proposed bylaw, it became apparent that, due to the definition of 'brothel' in the Act, persons providing commercial sexual services on their own account or in small owner-operated brothels (SOOBs), which operated effectively as home-based employment, would be excluded from operating under the proposed bylaw, except in the Central City. There was no evidence available or presented that such activities of SOOBs had created problems nor failed to comply with City Plan rules as home occupations.
47. The Council's Prostitution Reform Subcommittee, in considering submissions, concluded that the scheduled area should not be changed, but that SOOBs should be allowed to operate in residential areas, being Living Zones as described in the City Plan. The proposed bylaw was presented to the Council at its meeting on 1 July 2004. The Council resolved to make the bylaw in accordance with the recommendations of the Subcommittee, save for deletion of the proposed amendment to allow SOOBs in Living Zones. The result was that the bylaw which came into effect on 7 July 2004 restricted the location of **all** brothels to the scheduled area, subject only to the exception in relation to three established businesses.

**The Judicial Review of the Christchurch City Brothels (Location and Signage) Bylaw 2004**

48. Willowford Family Trust and Terry Rex Brown sought a judicial review of the bylaw. This challenged the validity of that part of the bylaw by which the location of brothels in Christchurch was regulated, namely to within a defined area in the central business district. The applicants contended that this part of the bylaw was invalid for unreasonableness, repugnancy and for effecting a prohibition.
49. On 29 July 2005, the High Court of New Zealand made an order pursuant to section 12(1) of the Bylaws Act 1910 that clauses 6 and 7 of the bylaw be quashed as they related to the location of brothels.<sup>47</sup> The Court found that while the determination of the central city location for what could be described as 'businesses of prostitution' was within the power of the Council under the Act, the failure of the Council to permit SOOBs, despite the recommendation of the Subcommittee, was not. The Judge stated that the *recommendation represented, I think, a realistic squaring up to the clear intent of the Act. SOOBs are recognised in it as a constituent part of the business of prostitution.*

<sup>46</sup> Section 4(1) of the Prostitution Reform Act 2003 defines these as;

" commercial sexual services means sexual services that—

(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and

(b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)"

<sup>47</sup> WILLOWFORD FAMILY TRUST & TERRY REX BROWN HC CHCH CIV-2004-409-002299 [29 July 2005]

## 3 Cont'd

50. The Judge also stated:

*For completeness two further points should be noted. First, the majority view of respondents to the questionnaire who favoured confining brothels to the central business district can, of course, afford no protection to the bylaw. Elected representatives, although entitled to give weight to the views of, or mandate from, constituents, may not regard themselves as bound to that viewpoint.... In the face of this evidence and the terms of the Act, is the bylaw as it affects SOOBs valid? In my view it is not. Borrowing the words in Virgo the effect of the bylaw is to prohibit sex workers "from plying their trade at all in a substantial and important portion of the city no question of any apprehended nuisance being raised". Whether this conclusion is characterised as one based upon unreasonableness, prohibition or unreasonable restraint of trade, does not greatly matter. In substance, and whether viewed from the point of view of sex workers or of the public (to again use the words of Virgo), the practical effect of the bylaw is to deny the existence of SOOBs in the city of Christchurch. ...For these reasons I conclude that the location aspect of the bylaw is invalid in relation to its impact upon SOOBs.*

*The applicants, having succeeded in relation to one of the grounds of challenge, are entitled to an order pursuant to s12 (1) of the Bylaws Act 1910 quashing the bylaw as it relates to the location of brothels. Although, pursuant to s17 of that Act, it is competent to quash and sever part only of a bylaw, the Council did not suggest that the location provisions were severable. It follows that clauses 6 and 7 of the bylaw, which together govern the location of brothels, are quashed. The clauses relevant to signage are unaffected.*

### Section 155 Analysis

#### Number of brothels

51. The PLRRC, in reviewing the Act, was required to consider whether the brothel certification regime was effective or whether a system was needed for identifying the location of businesses of prostitution. It should be noted that the provision in the Act does not actually certify "brothels", but makes provision for the issue of certificates to operators of a business of prostitution. These do not apply to sole operators or collectives of four or less sex workers where workers control their own earnings (SOOBs). Nor are street workers caught under the provision for the same reason as SOOBs. Certificates are issued for one year by the Registrar of the Auckland District Court. The register is held at the Auckland District Court and can only be accessed by the applicant or holder concerned and the Registrar. Members of the Police can inspect the register, but only for the purposes of investigating an offence. The register does not include the name or names of any business of prostitution the certificate holder is associated with. The register is not publicly available, and the Review Committee did not consider that this should change.
52. There has been no significant increase in the number of brothels in Christchurch following the implementation of the Act as far as can be determined, which was one of the reasons given for the original introduction of the bylaw. Evidence of the existence of most brothels in the Christchurch district could only be obtained by the Council by tracing their existence through a lengthy and costly process or if they come to the attention of the Council from complaints. Brothels in general are unlikely to create significant problems as noted above, and if so other means are available to deal with these, such as controls under planning legislation. The PLRRC found that evidence from the Auckland District Court indicated the number of certificates issued had decreased each year since implementation of the Act. Some evidence suggests this is because there has been a decline in the viability of the sector and a lack of new applications. It should be noted that the definition of brothel in the Act<sup>48</sup> excludes premises where accommodation is provided, such as hotels or motels.

<sup>48</sup> Brothel means any premises kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere

## 3 Cont'd

*Establishing nuisance, protecting public health and reducing offensive behaviour*

53. In relation to controls on the location of brothels it is presumed for the purposes of the analysis under section 155 of the Act that the Council should identify any issues for which there is evidence of offences under the provisions of section 145 relating to protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; or minimising the potential for offensive behaviour in public places. In undertaking this task the process of the Code of Good Regulatory Practice should be followed, as well as the decision making guide adopted by this Council.<sup>49</sup> There has been little information, either prior or subsequent to the Act, that premises perceived to be operating as brothels have been responsible for causing problems that breach any matters contained in section 145. Some issues that have been the cause of complaint relate more to the inappropriate use of premises under the City Plan and in a number of instances moral reactions to commercial sexual services occurring in the City.
54. In examining the possibility of potential for offences under the powers contained in s.145 it appears that there is little evidence for such. To claim a public nuisance exists requires some consideration of an appreciable interference with a public right which causes damage, injury, discomfort or inconvenience to **all** members of the public.<sup>50</sup> Given the level of complaints received over the years prior to and since the introduction of the bylaw, such a nuisance may be difficult to establish. In the development of the bylaw, information was provided that an increase in regulatory controls could reduce the protection and maintenance of public health and safety by driving such activities underground for the purposes of the Act. This particularly applies to purposes such as *(b) promotes the welfare and occupational health and safety of sex workers:* and *(c) is conducive to public health*. It is not considered that location controls for brothels are applicable to *minimising the potential for offensive behaviour in public places* as the commercial sexual services occur within premises and not in public places. Certainly there were no instances brought to the Council's attention of such offensive behaviour occurring in public places associated with brothels.
55. In relation to signs there is also the specific requirement in section 12(2) which the Council would have to be satisfied about, in order to make a bylaw. The Council must determine that the bylaw is necessary to prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or that the signs are incompatible with the existing character or use of the area.

**Location - Evidence of problems**

56. On the basis of almost five years' experience with the bylaw, and over three years since the location requirements were quashed, there have been few problems experienced with the location of such businesses of prostitution; see below for details of complaints, or indeed with SOOBs. Any problems have been able to be dealt with under provisions of the City Plan, where evidence has been able to be obtained, that businesses of prostitution are operating in Living Zones under the Plan. In the case of SOOBs few instances have arisen that have not been able to be dealt with under the rules relating to "home occupations" under the City Plan. There are significant limitations on the use of residential premises for other than residential activities that restrict any nuisance or adverse effects of "other activities" under the City Plan, for example, but controls over sexual activities being undertaken (whether paid for or not) are not possible nor practicable under the City Plan. The High Court judgement (and the PRLLCP report) has clearly stated that in regard to location controls provision should be made for SOOBs to be permitted within the city. Even where there have been concerns expressed about prostitution *per se* there has been little evidence of specific matters of concern. As pointed out below there is no evidence for any change in the level of activity from that prior to the Act when no concerns were expressed.

<sup>49</sup> *Code of Good Regulatory Practice*, Competition and Enterprise Branch, Ministry of Economic Development, November 1997 [<http://www.med.govt.nz/bustlt/compliance/regprac.html>]

<sup>49</sup> <http://www.local.ccc.govt.nz/decisionmaking>

<sup>50</sup> Laws of New Zealand, Nuisance at Para 14



## 3 Cont'd

57. An analysis of enquiries and information requests received by Council's Enforcement and Inspections unit since the City's Brothels (Location and Signage) Bylaw came into effect in 2004 has been undertaken. It is based on the more substantive matters reported to or requested of Council, with low level general enquiries or unsubstantiated comments not being recorded.

Complaint Matter	Prior to High Court Judgement	Since High Court Judgement
From neighbours	1	4
Late evening/night operation	1	1
Noise related	1	1
Parking issues	-	1

Complaints in recent years have tended to come from people who are concerned about the operation (or what appears to be the operation) of suburban brothels. What is difficult to determine or prove is if a suburban owner operated brothel is not complying with both the Prostitution Reform Act and the City Plan, e.g. meeting the requirements for both regarding the number of people allowed to live and work at the residence and the associated building space requirements. Nevertheless, as the table shows, these cases are relatively few, with the parties concerned either complying with the City Plan advice once they are more aware of its requirements (e.g. appropriate hours of operation) or choosing to cease operations. No abatement notices have needed to be served since October 2005, which was the only occasion where one was served since the 2005 judgement. Based on the enquiries received by the Council's Enforcement and Inspections unit, there are low levels of complaints being made since the High Court judgement of 2005. Complaints that are made have generally been adequately dealt with by Council officers under the City Plan, with further action seldom needed. There is little evidence of a public nuisance occurring as a result of brothel activity, either in the city or the outlying suburbs.

58. The fears expressed by some persons of a significant increase in the activity within the City have not been realised and this is supported by the report of the PLRRC. Evidence for any significant problems is not available to support the need for regulatory controls. The final issue that precludes such controls is that, in reality, it is not possible for the Council to easily obtain the addresses of businesses of prostitution, and almost impossible to identify SOOBs in the City. For the above reasons, there seems to be no significant problems identified regarding location which require regulation under the Act. This is even taking into account the views of some members of the community that such businesses should not exist in the City. Most known businesses of prostitution have existed considerably prior to the introduction of the Act and concerns raised in some of the submissions at the time of introduction of the bylaw were not apparent prior to that.
59. In the Banks Peninsula Ward of the Council there is no evidence of any brothels operating in the area, and certainly no evidence of problems arising from commercial sexual services. It is presumed that is the reason that no such bylaw was introduced by the previous Banks Peninsula District Council. As in the other parts of current City controls under the District Plan are available to deal with any future, but unlikely, problems of location and signage.

### Signage – evidence of problems

60. The Act in regard to signage states the Council must consider in its deliberations "...that the bylaw is necessary to prevent the public display of signage that-(a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or (b) is incompatible with the existing character or use of that area."<sup>51</sup> Section 155 of the Act requires the Council to identify any perceived problem in determining whether a bylaw is the most appropriate method of dealing with that problem or whether it can be addressed in some other way. There is no evidence of any such problem that falls within the categories specified above, nor was any provided at the time of the introduction of the current bylaw. In the report of the Prostitution Reform Act Subcommittee to the Council meeting of 1 July 2004 it was stated:

<sup>51</sup> Section 12 (2) the Prostitution Reform Act 2003

## 3 Cont'd

*It was not to be expected that the signage requirements, despite being significantly tighter than those applying to other legal businesses, would cause major problems. It appears that this is due to businesses not having signage which causes offence to reasonable members of the public. ... The controls were therefore introduced to preclude future possible signage that could be considered offensive, or to attempt to reduce the visibility of such operations.*

61. At the time of the development of the bylaw there was little or no evidence that such signage associated with premises providing commercial sexual services fell into such categories. Submissions received during the process indicated that premises such as SOOBs operating in residential areas were unlikely to use signage in any case and other businesses of prostitution that may operate outside the designated zone were likely to be limited to drawing attention to such activities even before the location provisions were quashed. The Council determined that a prohibition should apply to any brothels outside the designated area under the bylaw, including those which were permitted initially under the bylaw outside that location control. This prohibition was considered necessary in addition to City Plan regulations to prohibit signage describing the details of the services available in the premises (which are permitted for other businesses). In general this application was supported by the then known industry and certainly by the few submissions received on the bylaw and the views of persons completing the pre bylaw questionnaire.
62. It should be noted that almost no cases, or complaints, in relation to brothels signage have occurred in the five years the bylaw has been in force. Whether the current bylaw has precluded the development of such possible signage or not is moot, but certainly there is no evidence of substantive complaints being received about signage<sup>52</sup> As there is no evidence of any perceived problem that exists, in relation to advertising commercial sexual services, the justification for continuing the provision in the bylaw appears doubtful, particularly as matters of offensiveness of advertising signs could be controlled through the City Plan provisions as below. It is appreciated that support for controls was expressed through the submission process on the proposed bylaw, although limited numbers raised that issue following the SCP (17 of the 88 submitters supported the bylaw proposals) with only 2 concerned that the now legitimate business should be restricted compared with other businesses.
63. As pointed out above, the major issues with signage appeared to relate to alleged "offensive" or "sexually explicit" signage that were seen to exist, but were not associated with advertising "commercial sexual services" *per se*. The display of outdoor advertisements are controlled under the provisions of the City Plan in regard to area, height, illumination, relationship to the site,<sup>53</sup> and compliance with the Advertising Standards Authority Code of Practice relating to criteria for offensiveness and decency of advertising.<sup>54</sup> It should be noted that the City Plan and the Banks Peninsula District Plan enables regulation of signage associated with brothels (in a similar way to the regulation of signs associated with other businesses) but not its prohibition.
64. Should the Council wish to continue to control signage as currently under the bylaw, given that those provisions still exist and were not challenged in the judicial review, the bylaw could be continued until it lapses two years after the 7 July 2009. It would allow signage advertising commercial sexual services only in the central city area as defined in the bylaw and prohibit it in any other areas of the city. The continuance of the current bylaw, subject to the matter not being appealed, would avoid possible consideration of section 155 issues at this time particularly as the evidence is limited as to perceived problems.

<sup>52</sup> Only one complaint has been received since the bylaw has been in force.

<sup>53</sup> Christchurch City Plan Volume 3 : Part 10 Heritage and Amenities : 3 Display of outdoor advertisements

<sup>54</sup> *Rule 4 Decency- Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services) and Rule 5 Offensiveness – Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services), NZ Advertising Standards Authority, Advertising Code of Ethics, 1 August 1996*

## 3 Cont'd

## Conclusions

65. Applying the tests and analysis carried out under section 155 of the Act there is no good evidence that there is a need for controls under a bylaw over the location of either businesses of prostitution or SOOBs in the Christchurch City Council district. Many of the original concerns expressed at the time of the introduction of the Act appear to have been based on a misunderstanding that the Act had changed the legality of prostitution, when all it did was remove some limited offences related to the activity. Prostitution *per se* had been legal for a lengthy period and it had existed for a considerable time in New Zealand and in Christchurch without significant problems occurring. The perception that the legislation would lead to an increase in the activity has not been met, nor has there been any evidence of any significant increase in problems from such a source.
66. As pointed out above, the perception that an increase in signage in the inner city areas where it was allowed would occur also was not well founded and any that had occurred could have been controlled through City Plan rules. If there was no bylaw then it is also expected that there would be no increase in signage. There is no evidence that the industry intends to produce signage that would meet the test in the power under section 12(2) of the Act (cause offence or be incompatible with the character of the area). In the case of SOOBs which operate in Living Zones, in general, there have been no identifiable cases that such operations, given the nature of the activity, have or are likely to have signage, but if they did, it must comply with the rules under the City Plan, or in the case of the Banks Peninsula ward with the District Plan.<sup>55</sup> It was clear at the time of development of the bylaw those operating outside the inner city area did not consider there was any need to signage.
67. The analysis undertaken has revealed there is no significant evidence for nuisance problems caused by the existence of brothels in Christchurch City, either from their location or the signage used and any such can be controlled under the current provisions of either the City Plan in the case of Christchurch<sup>56</sup> or the District Plan in the case of the Banks Peninsula ward. The argument that a small proportion of the public<sup>57</sup> do not consider prostitution should occur in the area is probably unrealistic given its long history and that it is a legal activity. Location can only be regulated and not prohibited. Attempts at controls which may have the effect of driving it underground were seen by health professionals as not meeting the purposes of the Act. It is generally considered that restrictions should not be placed on legal activities without evidence of proven nuisance affecting a wide proportion of the public. In the case of brothels in Christchurch, there is no such evidence of problems and it is concluded that the current bylaw should be revoked. Should it become apparent that, sometime in the future, the situation may change the matter could again be examined if evidence is available that significant problems exist.
68. There are some difficulties in undertaking enforcement on the operation of SOOBs under the Act. They are not included in the Act as businesses of prostitution and hence do not require operating certificates under the Act, as each of the sex workers retains control of their own income. There is no right of entry into homes used for such purposes under the Act without a warrant **and** good evidence that a business of prostitution is occurring. They, however, would be more easily controlled under the City or District Plans as home occupations, or home enterprises, with the controls on hours of operation, space used, and vehicle movement criteria that apply.

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<sup>55</sup> "Home Enterprises" permitted under the Banks Peninsula District Plan are not permitted to have signage.

<sup>56</sup> Evidence given before the High Court in the Willowford Family Trust case indicated that there was limited scope for a brothel (other than complying with the "home occupation" rules) to establish in Living Zones under the City Plan as a permitted activity. It was also indicated that permitted activity status in most business zones was unlikely for any large scale brothel. Failure to meet the standards would require the consideration of a resource consent. Affidavit of Catherine Patricia Elvidge, 17 March 2005

<sup>57</sup> The questionnaire responses were a self selected non random sample of the total population of Christchurch and as such cannot be taken as representative.

## 3 Cont'd

69. The report of the PLRRC in commenting on the High Court decisions regarding brothel bylaws has stated:

*"In the Committee's view, the sex industry should be regulated, as far as possible, in the same manner as other industries, that is, subject to the general law of nuisance and a regulatory scheme that is based around ameliorating that nuisance. Such an approach may assist in reducing the stigma attached to the sex industry. Where nuisance is not a likely result of the establishment of a shop, factory or brothel, it is unreasonable to place a prohibition on its establishment."*<sup>58</sup>

**Options Considered in the Review**

70. The section 155(1) analysis undertaken has revealed there is no significant evidence for nuisance or any other problems caused by the existence of brothels in Christchurch City, either from their location or the signage used and any issues that do arise from location or signage can be controlled under the current provisions of the City Plan or Banks Peninsula District Plan. The following options have been considered in reviewing the current bylaw.

*Option A: "do nothing and allow the current bylaw to lapse"*

71. In this case the current bylaw as amended by the High Court in relation to the quashing of the location provisions would continue in force for a further two years from the 7 July 2009. It would retain the signage provisions, including the prohibitions outside the First Schedule area, but would rely on the City or District Plan requirements in regard to location issues. Legal advice is to the effect that this option may be *ultra vires* the LGA 02 if a review under section 155 has been undertaken. If the Council has made the determinations under section 155 then its only options appear to be as set out in section 160(3). If it considers the bylaw should be amended, revoked, or revoked and replaced, it must use the SCP under section 156, or if it considers it should continue without amendment it must also use the SCP. If the Council has only got part way down the track of the section 155 review and does not make the final determination, then it could just let the bylaw lapse under section 160A.

*Option B: "make a new bylaw covering location (allowance for SOOBs and regulate where in Business Zones businesses of prostitution could be operated) and signage"*

72. This option would not be supported on the basis that there is no evidence of a significant problem existing and therefore fails the section 155(1) criteria. Considerable work would be needed to examine the most appropriate Business Zones for businesses of prostitution and the reasons for their selection. While the High Court judicial review accepted the Inner City area contained in the current bylaw (despite quashing the requirement) the Judge stated: *"it is perhaps surprising that the Council resolved to confine brothels to the central business district alone. The evidence as to the location of massage parlours registered under the previous legislation, suggested that, while there was a concentration of parlours within parts of the central business district, they were by no means confined to that area, ... and others, were situated in business areas on certain main arterial roads outside the central business district. This historical pattern may afford the best evidence concerning where premises suitable for the business of prostitution are to be found"*.<sup>59</sup>

*Option C: "make a new bylaw just covering signage"*

73. This option would enable the Council to both regulate and prohibit signage advertising commercial sexual services under the Act in, or in view of, a public place. It would require the Council to determine the bylaw is necessary to prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or that the signs are incompatible with the existing character or use of the area. Given that there is little evidence for breaches of the present bylaw provisions, or evidence that businesses of prostitution have attempted to erect such signage that may fail to comply with the NZ Advertising Standards Authority, Advertising Code of Ethics which applies under the City Plan it is unlikely the bylaw option would meet the section 155(1) criteria.

<sup>58</sup> Prostitution Law Reform Review Committee report, May 2008, p 145

<sup>59</sup> WILLOWFORD FAMILY TRUST & TERRY REX BROWN HC CHCH CIV-2004-409-002299 [29 July 2005]

## 3 Cont'd

*Option D: "revoke the current bylaw"* [Recommended Option]

74. There is not enough evidence of a problem regarding location or signage or that a bylaw is the most appropriate way to address any perceived problem. Evidence is available that controls exist under the City Plan and District Plan to address the use of premises for brothels and signage which may be considered offensive to ordinary members of the public. The revocation option is recommended rather than allowing the bylaw to lapse although Option A would have the same effect but in two years time.
75. Should the Council consider sufficient evidence exists to consider any of the above options as to the development of a new bylaw covering either location or signage the issues could be addressed through the Brothels Location and Signage Bylaw Subcommittee. It would need to examine the evidence for introducing any bylaw and determining possible areas for the location of businesses of prostitution and whether to regulate or prohibit signage advertising commercial sexual services throughout the city (or in parts of it).

#### Recommended Timetable for Consideration of Revocation

76. The following is a tentative timetable for further consideration of the revocation of the bylaw:
- 6 November 2008 -Section 155 report to Regulatory and Planning Committee
  - 27 November 2008 – Section 155 report to Council
  - Late January to beginning March 2009 – Special Consultation Procedure
  - Hearings of submissions after 23 April 2009
  - Final Report of Hearings Panel to Council – June 2009

#### 4. CONSULTATION ON DRAFT REGIONAL POLICY STATEMENT CHAPTERS ON ENERGY, HISTORIC HERITAGE AND AIR

<b>General Manager responsible:</b>	General Manager Strategy and Planning, DDI 941-8281
<b>Officer responsible:</b>	Programme Manager- Healthy Environment
<b>Author:</b>	Melissa Renganathan, Policy Analyst – Strategy and Planning Group

#### PURPOSE OF REPORT

1. The purpose of this report is to provide the Council with an overview of the issues arising in draft chapters of the Canterbury Regional Policy Statement (CRPS), currently being reviewed by Environment Canterbury (ECan), and to gain the Council's support on recommendations for feedback to ECan with regard to the draft chapters on Energy, Heritage and Air.
2. This is a non-statutory process which allows for consultation at an early stage of the review. It will replace the ECan seminars and workshops previously held for Council. Instead, over the next few months, the Committee will be provided with a number of draft CRPS chapters, a Committee report and staff recommendations for feedback to ECan. The Council has already provided comments on the draft Waste Minimisation and Management, Contaminated Land and Hazardous Substances Chapters, last month. The formal Resource Management Act 1991 (RMA) consultation process will take place next year when the entire draft CRPS is completed and notified as a proposed policy statement.
3. Comments were provided by Leonid Itskovich (Energy Manager) who reviewed the Energy draft chapter, Neil Carrie (Principal Advisor Heritage/Urban Design) who reviewed the Historic Heritage draft chapter and Terry Moody (Principal Advisor Environmental Health) who reviewed the Air draft chapter.

## 4 Cont'd

## EXECUTIVE SUMMARY

4. The CRPS provides an overview of the resource management issues for the region and is prepared to meet RMA requirements. The policies it contains affect the way the Council manages its City Plan as the Council will have to give effect to the CRPS (as required under s. 75 of the RMA).
5. The CRPS became operative in 1998 and is required to be reviewed within ten years. ECan is leading the review of the CRPS and is consulting with all Canterbury territorial authorities throughout the review process.
6. This review is a separate process to the preparation of Proposed Change No 1, which introduces a new Chapter 12A, (Development of Greater Christchurch). Chapter 12A sets out land use distribution, particularly for areas available for urban development, the household densities for various areas and other key components for consolidated and integrated urban development. It also identifies land which is to remain rural for resource protection and enhancement and other reasons.
7. ECan began discussions over the review of the CRPS with District Councils in late 2006. ECan has consulted with Territorial Authority (TA) Officers on the review process, Issues and Options papers and draft chapters of each CRPS chapter. Discussions have taken place (and will continue to) at the Officer level through workshops and meetings and at the Councillor level through Council meetings and committee meetings.
8. The current CRPS consists of 14 Chapters which discuss various regional issues (e.g. water, soil and landscape) and provide objectives, policies and methods with regards to these issues. During the review process, it was decided that some issues would be better dealt with in new chapters (e.g. contaminated land which was previously dealt with in Chapter 7 Soils and Land Use) or better dealt with in conjunction with other issues (e.g. the proposed Settlement Chapter will also have transport provisions as well as deal with issues regarding versatile soils).
9. The three draft chapters **attached** (see **Attachments 1, 2 and 3**) discuss energy issues in Canterbury (Energy), management of heritage features (Historic Heritage) and management of air quality (Air Quality). The Council's comments and recommendations are also found in each chapter.
10. The "Energy" Chapter (see Attachment 1) is a rewrite of the current Chapter 14 Energy (which broadly has provisions for dealing with the adverse effects of the use of fossil fuels, encouraging the use of renewable energy and promoting energy conservation and efficiency). Although Canterbury is a major producer of renewable energy within New Zealand, (principally due to the Waitaki electricity generation scheme), the ECan review of the Energy Chapter notes that the use of non-renewable and carbon based energy continues to increase within the region mainly due to the transport sector whose energy consumption has increased by an average of 4% per annum since 1982, and accounts for 57% of the regions' energy consumption in 2004. Although some environmental outcomes have been achieved (for example the Greater Christchurch Urban Development Strategy has included provision for better use of transport routes and placing population growth nearer to established public transport routes), trends still show that the CRPS energy provisions have been largely ineffective. Drivers for increased energy consumption include dispersed settlement patterns, more vehicles on the roads, larger houses being built, more appliances being used and greater production and consumption across many industries.
11. The ECan review of the current chapter concludes that energy remains a regionally significant resource management issue although the legislative and policy context through which energy issues are addressed has changed in the past decade and some issues, such as the finite nature of fossil fuels and the effects of their use, have received a much higher profile. The 2004 amendments to the Resource Management Act 1991 (RMA) which highlights renewable energy were reinforced in 2007 with central government's release of the "New Zealand Energy Strategy to 2050" and the "New Zealand Energy Efficiency and Conservation Strategy".

## 4 Cont'd

12. The Regional Energy Strategy (RES) 2004 (of which a draft revised RES has been recently adopted) sets the direction for ECan's energy related functions. Many energy issues are linked to the management and use of other resources such as water and could therefore be dealt with in these chapters (as is proposed to do with transport energy issues which will be covered under the Urban and Rural Development Chapter). It was decided that the CRPS should still have an energy chapter as removing it would detract from the resource management issues surrounding energy in Canterbury.
13. The Council is supportive of the need for energy provisions in the CPRS and is pleased that transport energy issues are discussed in the Chapter which discusses transport. However as currently written, the proposed Energy Chapter places greater emphasis on issues relating to electricity generation and transmission with Policies 1 – 5 discussing electricity transmission, (electrical) energy generation and efficient use of (electrical) energy. There is little discussion in regard to wider energy issues such as the need to reduce energy use and replacing non-renewable with renewable energy sources. Detailed comments on the draft Energy Chapter are located throughout Attachment 1.
14. The current CRPS Chapter 8 Landscape, Ecology and Heritage contains the Objective and Policy that provide for the protection and management of historic and heritage sites and buildings. Section 20.4 of the CRPS also lists criteria to consider when determining regionally significant sites. Chapter 12 Settlement and the Built Environment also includes provision for the protection of heritage features from the adverse effects of land use. Chapter 6 Provision for the Relationship of Tangata Whenua with Resources includes specific provision for the protection of heritage features such as wāhi tapu.
15. Although heritage features and values are generally well provided for in the region, the ECan review is unable to confirm the effectiveness of heritage provisions in the CRPS as some provisions provided are vague, for example, one of the provisions provided in Section 20.4 state that although a site may meet the criteria of "regional significance" it may not necessarily be regionally significant. Under the RMA, heritage has also been elevated to Section 6 (matter of national importance) and the CRPS provision therefore needs to reflect this change.
16. ECan's review has highlighted that provisions need to be strengthened and that the CRPS should reflect the elevated status of heritage as provided for within the RMA. It is therefore proposed that heritage be dealt with under the "Historic Heritage" Chapter (see Attachment 2) and to retain the existing provisions but strengthen and revise them to provide greater clarity and guidance for district councils.
17. The Council supports the need for clear guidance on protecting and managing heritage and is in general supportive of the proposed chapter. The Council is however concerned with the language used in the introduction as although RMA terms are used they are not used in the same context. There is also no mention of the role of the New Zealand Historic Places Trust (NZHPT) or the role of the NZHPT Māori Council in the proposed Chapter with regard to the process of identification of significant features and sites. Detailed comments on the draft Historic Heritage Chapter are located through out Attachment 2.
18. Presently, the CRPS policies relating to air quality are found in Chapter 13 Air. These aim to maintain or improve ambient air quality, avoid or minimise the adverse effects of localised air discharges and reduce Canterbury's greenhouse gas emissions. Related provisions are also found in Chapter 12 Settlement and the Built Environment, Chapter 14 Energy and Chapter 15 Transport.
19. In its review of the chapter ECan notes the many changes at the national and regional level with regard to air quality issues since the preparation of the CRPS. At the national level there is significant focus on the response to climate change, and an amendment to the RMA to focus local authorities on the consequences of climate change. The National Environmental Standards Relating to Air Pollutants, Dioxins and Other Toxins (NESAQ) was prepared in 2004 and prohibits certain discharges and specifies certain air quality standards.

**4 Cont'd**

20. A review of the effectiveness of the current CRPS policies concluded that although ambient air quality is generally improving, this is basically a result of the Natural Resources Regional Plan (NRRP) Chapter 3 resource consent processes and ECan's Clean Heat Project in Christchurch. The review concludes that ambient and local air quality continue to be issues in the Canterbury region as no trends were determined in relation to local air quality, and Canterbury's CO<sub>2</sub> emissions continue to increase. Of the nine Policies in Chapter 13, ECan's review considers that Policies 1, 3, 4, 5 and 9 are given effect through the NRRP and resource consents, and can be considered effective although the environmental monitoring datasets are minimal making it difficult to set monitoring programmes. Policy 6 is superseded by the NESAQ while the other three Policies are considered ineffective.
21. The proposed draft Air Chapter (see Attachment 3) attempts to recognise these issues and retains the level of details in relation to ambient and local air quality issues while updating the provisions to include current changes (such as deleting Objective 3 and associated Policies which relate to global emissions).
22. The Council is supportive of the need for a draft Air Chapter. However it is unsure of the additional benefits provided by the Chapter as currently written as it is largely repetitive of the wording in the NRRP Chapter 3. Detailed comments on the draft Air Chapter are located throughout Attachment 3.

**FINANCIAL IMPLICATIONS**

23. The CRPS could result in additional resources being required to amend planning documents in order to give effect to the CPRS. Giving effect to the final CRPS will be achieved through a variety of mechanisms including the Christchurch City Plan and Banks Peninsula District Plan and the LTCCP.

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

24. The cost of preparing and participating in the CRPS review is covered by existing unit budgets.

**LEGAL CONSIDERATIONS**

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

25. The RMA provides for the Regional Council (ECan) to prepare Regional Policy Statements and review them. The Council is participating in the ECan consultation process in the preparation of the proposed Chapters. The Council will also have the opportunity to influence and shape the proposed CRPS through the formal submission process which is scheduled for mid 2009.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

26. The chapters support the LTCCP objectives that aim to provide efficient community services, protect and manage heritage and safeguard Christchurch and Banks Peninsula's air quality.

**ALIGNMENT WITH STRATEGIES**

27. The recommendations support the Council's Sustainable Energy Strategy 2008-2018 (2007), the Heritage Provisions in the Christchurch City Plan and the proposed Banks Peninsula District Plan and the transport and development provisions provided under the Urban Development Strategy.

**Do the recommendations align with the Council's strategies?**

28. As above.

**CONSULTATION FULFILMENT**

29. Not applicable.



## 4 Cont'd

**STAFF RECOMMENDATION**

It is recommended that the Council provides feedback to Environment Canterbury on the draft chapters as set out in Attachments 1 to 3.

**COMMITTEE RECOMMENDATION**

It is recommended that the staff recommendation be adopted.

5. **BRIDLE PATH ROAD AREA PLAN**

<b>General Manager responsible:</b>	General Manager Strategy and Planning DDI 941-8281
<b>Officer responsible:</b>	Carolyn Ingles, Liveable City Programme Manager
<b>Authors:</b>	Ivan Thomson, Principal Professional Adviser; Dale Harris, Assistant Policy Planner

**PURPOSE OF REPORT**

1. The purpose of this report is to seek the Council's approval for the adoption of the Bridle Path Road Area Plan (**attached**). The Plan provides the development framework for a change to the City Plan to remove the 'deferred' status from the Living HA Zone located adjacent to Bridle Path Road in the Heathcote Valley.

**EXECUTIVE SUMMARY**

2. The Bridle Path Road Area Plan covers the 19.9 hectare 'deferred Living HA Zone' on the lower slopes of the Heathcote Valley (refer **Attachment 1**), and provides the framework for land use planning and public expenditure in this zone. Its purpose is to:
  - (i) ensure future residential development is integrated into the local environment and adjoining land uses;
  - (ii) coordinate the provision of infrastructure and hazard mitigation works; and
  - (iii) protect intrinsic values such as landscape and heritage features.

The Area Plan contains objectives and implementation methods designed to achieve this purpose, and has been finalised following community input to the draft Plan during April-May 2008.

3. The deferred Living HA Zone arose from a Consent Order issued by the Environment Court in 2001 which required the resolution of several issues prior to the deferred zoning being uplifted. These issues have been resolved through the Area Plan process, which also provides the platform for a proposed change to the City Plan to amend the zoning, and sets the resource management framework for the future development of this site. The Consent Order also noted that a variant of the Living HA Zone could be established, and much of the work that has gone into this Plan has been in relation to determining what variant (if any) would be appropriate.

*Consultation on the Draft Area Plan*

4. A 'Draft' Bridle Path Area Plan (Draft Plan) was adopted by the Council for public consultation at its meeting on 27 March 2008. The Draft Plan sought public feedback on four development options and flagged 'Option 2' as the preferred option for future development of this area (refer **Attachment 2**). Option 2 was preferred mainly because it offered the least expensive rockfall mitigation option (earth bunding), thereby minimising the risk to Council should circumstances arise that required the Council to pay for the mitigation. An overall summary of the options that were considered in the Draft Plan is attached (**Attachment 3**).

## 5 Cont'd

5. A report on public feedback to the Draft Plan was presented to the October meeting of the Regulatory and Planning Committee. Public feedback generally supported a variant of the preferred option 'Option 2', but most submitters sought a lower density of development than proposed in order to reduce the impact of this development (eg visual amenity, traffic, stormwater runoff etc) on the character of the Heathcote Valley. Directly affected landowners also requested that development be permitted further up-hill than depicted in Option 2.

*Further site investigations (geotechnical and landscape assessments)*

6. Implicit in the feedback received was a potential tension between densities (lot sizes), the number of lots that could be created, and the efficient use of the site. The development proposal in 'Option 2' was subsequently re-examined, and further investigations into rockfall mitigation were undertaken to establish whether more land could be developed without increasing the risk of property damage or injury from rockfall. The revised geotechnical investigation indicated that an 'earth bund' could be installed at a higher elevation than originally thought, enabling development to extend further up-hill without incurring additional mitigation costs (refer **Attachment 4**). A landscape evaluation was then carried out to assess the effects of extending development further up-hill, and whether the visual effects of the bunding could be mitigated. This evaluation concluded that, in principle, such an extension could occur without compromising the objectives and policies in the City Plan, and any visual effects of bunding could be mitigated.
7. Because the Area Plan will form the basis of a Plan Change prepared in accordance with the Resource Management Act 1991, these new findings will be important considerations. In adopting the Area Plan, the Council has to be satisfied that it will be supported by a Section 32 assessment, particularly in respect to the objectives and policies of the City Plan. The technical work done as part of preparing the Area Plan, particularly around rockfall mitigation and landscape, will form part of this assessment. Although the Area Plan sets out the preferred development plan for the Plan Change, this will not preclude a future hearings panel or (potentially) the Environment Court reaching a different conclusion as a result of any submissions or appeals to this change.

*Amended development option*

8. In coming to a preferred land use option for the Bridle Path Road site, considerable weight has been given to the conclusions in the new geotechnical and landscape assessments. This has resulted in the preferred upper boundary of development being moved to the position shown as approximately the 50m contour on the map in Attachment 4. Although the developable area has been increased in the final Plan, the average density has been reduced in response to the concerns raised during community consultation. The Area Plan therefore proposes a range of lot sizes across the site, ranging from around 650m<sup>2</sup> lots between the Bridle Path Road frontage the proposed waterway corridor / 20m contour (whichever is higher up-slope), up to 1,500m<sup>2</sup> adjoining the rural land (upper slopes) above. The anticipated yield is approximately between 70 and 90 sections, notably less than Option 2 (100 – 135 sections).

*Implementation*

9. The Plan relies on several methods for its implementation, including rules in the City Plan, land acquisition, environmental compensation, and covenants imposed by the developer(s). However, the key instrument for creating a coordinated development is a requirement, enforced through a rule in the City Plan, to adhere to an Outline Development Plan (ODP). The functions of the ODP are:
  - (i) to prevent ad hoc subdivision by individual land owners, leading to a disjointed development;
  - (ii) to manage the sequence of development so that it is integrated with roading, infrastructure, and hazard mitigation works; and
  - (iii) to identify linkages, open space, hazard mitigation measures, and any other features that need to be protected from the effects of development.

5 Cont'd

10. An important part of the Area Plan's implementation is to ensure that the initial costs of establishing rockfall hazard mitigation lie with the developer(s). Any lots deemed to be at risk from rockfall will not be approved until the Council is satisfied that adequate mitigation measures have been put in place.
11. Once adopted, the Area Plan will be a document that will have status as a strategy or management plan that Council will have regard to when considering whether or not to grant resource consent(s), and for preparing changes affecting the land.

**EXECUTIVE SUMMARY – UPDATE TO BRIDLE PATH AREA PLAN**

12. The preparation of the Bridle Path Area Plan follows a Consent Order issued by the Environment Court in 2002 to rezone this area from Rural 7 to Deferred Living Hills A (LHA). This signalled the intention to allow for future residential development on this site, subject to alleviating a number of constraints, the most significant being:
  - hazard mitigation (especially rockfall), including the location of mitigation works and the corresponding extent of developable area;
  - stormwater disposal;
  - the provision of internal roading access and waterway alignment; and
  - reverse sensitivity (avoiding development that could interfere with existing horticultural activities and high voltage transmission lines).
13. The steep nature of some of the land, and the risk from rockfall means only a part of the 19.9 ha site can be developed without rockfall protection. The further up the slope development occurs, the more elaborate and expensive protection must become. Initial geotechnical advice indicated that development up to approximately the 20m contour could be protected through a relatively inexpensive 'bundling' rockfall protection. The hazard mitigation works would be funded by the developer and would need to be in place prior to subdivision consent or building consent being granted.
14. The Draft Area Plan contained four possible development options for public consultation, including a 'do nothing' (status quo) option. The other three varied in their densities, number of sections, upper limit for development and hazard mitigation systems. The preferred option proposed to keep development to the 20m contour (consistent with advice received), predominantly Living 1 or Living H densities, and estimated a yield of approximately 100–135 lots.
15. Consultation on the Draft Plan included a pamphlet, public meeting and individual meetings with some of the landowners most directly affected. There were 115 written responses and most of the respondents supported the preferred option, but wanted lower densities (minimum 750m<sup>2</sup> sections instead of 450m<sup>2</sup> as proposed in the preferred option). Three of the landowners wanted development to be permitted further up the hill, consistent with the adjacent Morgan Valley development.
16. Further geotechnical analysis was undertaken to investigate the possibility of development occurring further up the hill. This indicated that development was feasible up to approximately the 50m contour using the less expensive rockfall mitigation option. A visual assessment on the effects of development to this level confirmed that such development would be consistent with the objectives and policies of the City Plan, and that lower densities would be preferable.
17. Consultation and follow up work resulted in three key changes recommended to the final Area Plan:
  - the residential development permitted to around the 50m contour
  - a low density development more akin to a Living HA Zone providing for up to approximately 90 lots, and
  - a minimum lot size of 750m<sup>2</sup>, rather than the 450m<sup>2</sup> in the Draft Area Plan.

## 5 Cont'd

**FINANCIAL IMPLICATIONS**

18. 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 in the future to decide whether to fund some or all of the work and recoup costs through financial contributions. This cost is potentially recoverable from developers via financial contributions under the Resource Management Act 1991 (RMA), imposed as conditions of consent, however a change to the City Plan would be required 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. It is also noted that constructing rockfall mitigation for the benefit of a highly localised area is not a project that is compatible with the Development Contributions Policy.
19. The ongoing cost of maintaining the rockfall mitigation measures has been estimated at \$2,000 to \$3,000 per annum. This ongoing cost cannot realistically be passed on to future landowners, as past Council experience has been that landowners are not diligent in voluntarily maintaining such structures. As these costs are currently not budgeted for, they will need to be included in the LTCCP.
20. Stormwater disposal is a major infrastructure cost in the Bridle Path area, however there is already provision in the Capital Works Programme for an integrated drainage scheme for the Heathcote Valley. Funding for stormwater improvements in the wider Heathcote catchment comes from development contributions.
21. Land for a proposed naturalised waterway link between the south boundary of the Area Plan and Morgan's Valley Road is currently being purchased by the Council and the formation of this link will be funded through development contributions. The formation of an internal road, adjacent to this waterway, will be the responsibility of the developer.

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

22. Currently there are no anticipated changes needed to the LTCCP other than provision for some operational funding for maintenance of hazard mitigation works (refer paragraph 13).

**LEGAL CONSIDERATIONS**

23. There are three key legal issues concerning the management of the rockfall hazard:
  - (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.

These matters were traversed at length in a separate report: Bridle Path Road – Options for Zoning, Hazard Mitigation and Hazard Mitigation Funding, presented to the 27 March Council meeting that specifically dealt with the hazard mitigation issues for this area. The relevant material is reproduced in **Attachment 5**.

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

24. Yes, see Paragraph 17 above.

5 Cont'd

**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**

25. Yes. The Area Plan will directly or indirectly support projects and activities under 'City Development', and 'Parks Open space and Waterways'.
26. No provision has been made for any potential cost of hazard mitigation works and/or land acquisition to accommodate it. Provision will need to be made in the 2009-19 LTCCP.

**ALIGNMENT WITH STRATEGIES**

**Do the recommendations align with the Council's strategies?**

27. The relevant Council strategies are as follows:
  - Greater Christchurch Urban Development Strategy (UDS). The Bridle Path Road Area Plan is within the proposed urban limits delineated in Proposed Change 1 to the Regional Policy Statement (RPS) and is therefore not subject to the provisions in that Change relating to new greenfields development.
  - City Plan. The Area Plan achieves several City Plan objectives and polices concerning 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 Valley Floodplain Management Strategy. One of the main 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 in the vicinity of the Bridle Path area.
  - 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.
28. Amongst other strategies, the Area plan will improve linkages such as cycleways, and walkways to the Port Hills, surrounding neighbourhoods and other green spaces, using where possible waterway corridors within the Area Plan.

**CONSULTATION FULFILMENT**

29. Council staff have maintained frequent contact with stakeholders through public meetings and telephone calls. In April and May 2008, the Draft Area Plan was made available for public consultation with landowners and the wider community by:
  - (i) sending a letter and copy of Draft Area Plan to directly affected parties and residents association;
  - (ii) making copies of the Draft Area Plan (including a summary document) available via usual Council channels: services centres, website, 'Have your Say' etc;
  - (iii) meeting with directly affected parties;
  - (iv) providing opportunities for public feedback through feedback forms and the Council website.
30. Mahaanui Kurataiao Ltd (MKT) has informed the Rapaki Runanga of the existence of the Plan and has been kept informed of the process to date.
31. Any member of the public will be entitled to make a submission and be heard on the Plan Change once it is notified.

5 Cont'd

**STAFF RECOMMENDATION**

That the Council adopt the final Bridle Path Road Area Plan.

**HAGLEY/FERRYMEAD COMMUNITY BOARD CONSIDERATION**

The Hagley/Ferrymead Community Board received a presentation from staff on the Bridle Path Road Area Plan at its 5 November 2008 meeting.

The Board discussed communications received from the Heathcote Valley Residents' Association outlining its concerns regarding consultation on the final area plan.

Mr Ian McLeod, President of the Heathcote Valley Residents' Association was invited to address the meeting. Mr McLeod advised that the Association intends to discuss the final area plan at its meeting on 26 November.

In acknowledgement of the Association's intentions, the Board favoured deferring the adoption of the draft plan via the Board to the Council, until after the Association's meeting in late November.

In addition to the recommendation below, the Board decided to commend staff for the report presented and for the manner in which the project has been progressed to date.

**HAGLEY/FERRYMEAD COMMUNITY BOARD RECOMMENDATION**

The Hagley/Ferrymead Community Board **decided to** recommend that a deferment be sought of the Council's adoption of the Bridle Path Road Area Plan until the Heathcote Valley Residents' Association has had the opportunity to consider the changes and expresses its view to the Community Board and the Council.

**REGULATORY AND PLANNING COMMITTEE CONSIDERATION**

At the Regulatory and Planning Committee meeting on 6 November 2008, Councillor Broughton moved:

*"That the item be deferred to return to the Committee after being considered further by the Hagley/Ferrymead Community Board and the Residents' Association."*

Councillor Buck seconded the motion.

The above motion when put to the meeting was declared **lost** by 5 votes to 1 on division no 3, the voting being as follows:

**Against (5):** Councillors Buck, Button, Reid, Wall, and Wells.

**For (1):** Councillor Broughton

**COMMITTEE RECOMMENDATION**

That the Council adopt the final Bridle Path Road Area Plan.

The Committee **noted** that staff will attend the Heathcote Valley Residents' Association meeting on 26 November 2008 and that a deputation to the Council can be heard, if necessary, at its 27 November 2008 meeting.

## 5 Cont'd

**ASSESSMENT OF OPTIONS**

26. Two principal options have been considered: the recommended option in this report, and the preferred option ('Option 2') that was included in the Draft Area Plan circulated in April for public consultation.

**Recommended option**

This option allows residential development up to the toe of rockfall protection structures (refer Attachment 4), at higher density than usual LHA densities but significantly lower than the Living 1 zone standard. Between 70 and 100 lots will be created, with a gradation of densities from 650m<sup>2</sup> fronting Bridle Path Road to 1500m<sup>2</sup> at the upper boundary.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	Lower average density and less households moderates the potential impact on the Heathcote Valley School.	No significant difference from other option.
<b>Cultural</b>	No discernable benefits or advantages compared to the other option.	No discernable costs or disadvantages compared to the other option.
<b>Environmental</b>	Lower average density will soften effects of buildings on the landscape and will reduce potential traffic movements on surrounding network.	Potential for adverse visual affects by allowing development higher up-slope than the other option, particularly if not supported by suitable landscape controls.
<b>Economic</b>	Possible economic spin-offs for local businesses.	<ul style="list-style-type: none"> <li>o Some operational costs for on-going maintenance of mitigation works, but no different to alternative option.</li> <li>o Lower section yields may reduce developers' margins.</li> </ul>

**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.
- A city of people who value and protect the natural environment, by actively working together to protect, enhance, and restore our environment for future generations.
- A well governed city, where decision makers manage public funds responsibly, responding to current needs and planning for the future.
- A healthy city in providing water quality, proposed cycleways, walkways and recreation areas, encouraging physical activity.
- A city for recreation, fun, and creativity in providing proposed cycleways, walkways and recreation areas, encouraging physical activity.
- 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 slightly reduce the funding base for the Heathcote Valley drainage scheme compared to the Draft Option 2.

**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 Ngāi Tahu, although Heathcote Valley floor has sites of known archaeological association.

**Consistency with existing Council policies:**

Option consistent with relevant Council policies:

- Supports the Council's City Plan Urban Growth Objective 6.1, the Greater Christchurch Urban Development Strategy, and the proposed Change No 1 to the Canterbury Regional Policy Statement.
- Supportive of Port Hills, Open Space policies, landscape and urban design principles.

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

Landowners/ potential developers have not had this proposition put to them as part of consultation on the Draft Plan. It is, however, a variant of Options 2 and 4 in the Draft Plan. Landowners are likely to be supportive and the local community will support lower density but may have mixed views on moving the upper limit to higher position.

**Other relevant matters:** N/A

## 5 Cont'd

**Option 2 – As per the Draft Area Plan**

This option would allow for significantly higher density development than otherwise provided for under the LHA zone, with between approximately 100 and 135 lots with section sizes more aligned to Living 1 and Living H zones. Development would be limited to area below the low hazard line, and would be contained primarily on the flatter, lower slopes.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	Provides more households within the city; increases housing supply; may contribute to more cohesive community in Heathcote Valley and contribute to viability of community networks and local, businesses.	Will potentially put more pressure on Heathcote Valley School, but little significant difference with final option.
<b>Cultural</b>	No discernable benefits	No discernable costs
<b>Environmental</b>	<ul style="list-style-type: none"> <li>Balance of land can be used for visual, amenity and possible recreation purposes.</li> <li>Slightly better in terms of sustainable development potential, for example more energy efficient in potential use of public transport.</li> </ul>	<ul style="list-style-type: none"> <li>Less opportunity for open space and amenity within subdivision.</li> <li>Area surrounded by varying residential development densities. Therefore higher density may appear visually inconsistent.</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>Development and mitigation costs per lot are lower for this option</li> <li>Greater 'pool' of developments contributing to both the area's drainage scheme and rockfall mitigation.</li> <li>Possible economic spin-offs for local businesses.</li> </ul>	<ul style="list-style-type: none"> <li>Some operational costs for on-going maintenance of mitigation works but no different to alternative option.</li> <li>Development kept on the lower slopes thereby reducing opportunities for views and more marketable sections. This will also affect returns for landowners.</li> </ul>
<p><b>Extent to which community outcomes are achieved:</b></p> <p>This option will contribute to the achievement of:</p> <ul style="list-style-type: none"> <li>A safe city, where risks from hazards are managed and mitigated.</li> <li>A city of people who value and protect the natural environment, by actively working together to protect, enhance, and restore our environment for future generations.</li> <li>A well governed city, where decision makers manage public funds responsibly, responding to current needs and planning for the future.</li> <li>A healthy city in providing water quality, proposed cycleways, walkways and recreation areas, encouraging physical activity.</li> <li>A city for recreation, fun, and creativity in providing proposed cycleways, walkways and recreation areas, encouraging physical activity.</li> <li>An attractive and well designed city, through comprehensive planning, the provision of open space and recreation networks.</li> </ul> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>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; risk and management of rockfall hazard from Council land above the site.</p> <p><b>Effects on Maori:</b></p> <p>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 Ngāi Tahu, although Heathcote Valley floor has areas of known archaeological association.</p> <p><b>Consistency with existing Council policies:</b></p> <p>Option consistent with relevant Council policies:</p> <ul style="list-style-type: none"> <li>Supports the Council's City Plan Urban Growth Objective 6.1, the Greater Christchurch Urban Development Strategy, and the proposed Change No 1 to the Canterbury Regional Policy Statement.</li> </ul> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>Landowners and the wider community have been consulted by letter, newsletter, telephone and public meetings, most recently in April 2008 when the Draft area Plan was released for public input. Option 2 was identified as the preferred option in that document.</p> <p><b>Other relevant matters:</b> N/A.</p>		



**PART B - REPORTS FOR INFORMATION**

**6. INSPECTIONS & ENFORCEMENT UNIT ANNUAL REPORT 2007-08**

The Committee considered the Inspections and Enforcement Unit 2007/08 Annual Report following staff recognising the need to provide the Council, through the Committee, with better information in regards to the service outputs and operational issues as they relate to the Council's inspections and enforcement functions.

The Committee **decided** to receive the Inspections & Enforcement Unit Annual Report.

The Committee **noted** that future annual reports would benefit from the inclusion of yearly comparisons.

**7. EARTHQUAKE PRONE, DANGEROUS AND INSANITARY BUILDINGS POLICY**

The Committee considered a report regarding the Earthquake Prone, Dangerous and Insanitary Buildings policy.

The Committee **decided** to receive the report.

**8. REGULATORY AND PLANNING COMMITTEE MEETINGS FOR 2009**

The Committee considered a report on potential meeting times for the Committee in 2009.

The Committee **decided** to receive the report and **recommended** that the Council resolve that the Committee continue to meet on the first Thursday of every month, but meet from 9 am to 1 pm. This can be readdressed if need be in 2009.

**9. PLANNING ADMINISTRATION MONTHLY REPORT FOR SEPTEMBER 2008**

The Committee received the first of what will be monthly reports with information about Resource Consent Applications received and processed by the Planning Administration and Subdivision teams.

The Committee **decided** to receive the report.

The meeting concluded at 1.04pm.

**CONSIDERED THIS 27TH DAY OF NOVEMBER 2008**

**MAYOR**