

9. RICCARTON BUSH ACT 1914 - PROPOSED AMENDMENT

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Legal Services Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek a resolution from the Council formally approving the proposed Riccarton Bush Amendment Bill ("the Bill") prepared by the Riccarton Bush Trustees in the form **attached** to this report and supporting its enactment into law.

EXECUTIVE SUMMARY

2. Riccarton Bush, Deans Cottage, Riccarton House, and the associated grounds, are vested in the Riccarton Bush Trustees ("the Board") pursuant to the Riccarton Bush Act 1914 ("the Act").
3. Under the Act, the Council appoints the majority of the members of the Board and accordingly the Board is a 'Council-controlled organisation' for the purposes of the Local Government Act 2002. Councillors Wall and Shearing are the current councillor representatives on the Board. Tony Gemmill and Pam Wilson are also Council appointees to the Board. In addition, the Riccarton/Wigram Community Board has appointed community board members Mike Mora and Beth Dunn to the Board.
4. The Council also provides significant funds to the Board, supplying in the 2008/09 financial year by way of levy the sum of \$108,310 and by way of grant for operational expenses the additional sum of \$145,563.00. Additional grants for capital expenditure are also made by the Council from time to time as and when required and agreed to.
5. The Board has identified a number of areas where the Act requires amendment to reflect current circumstances and practice. In promoting a Bill to amend the Act the Board intends to achieve the following (listed in order in which they are dealt with in the draft Bill, not necessarily in order of importance):
 - (a) To update the constitution of the Board to reflect the reform of local government which took place in 1989; and
 - (b) To update the statutory functions of Board; and
 - (c) To amend the existing power of the Board to impose on the Council an annual levy to reflect the reform of local government which took place in 1989 and to align the levy arrangements with current practice and the Council's planning processes; and
 - (d) To require the Board to undertake better financial budgeting through the preparation of a 'Ten-Year Financial Plan' to be approved by the Council; and
 - (e) To extend the Board's existing limited leasing powers and to permit the imposition of hire charges for the use of Riccarton House, Deans Cottage, the grounds and the Bush (but preserving free public entry to those facilities); and
 - (f) To increase the fine that the Board may impose for a breach of a by-law made by the Board under the Act from the existing maximum level of \$40 to a new maximum level of \$1000; and
 - (g) To make specific reference, for the first time, to the restoration, maintenance and conservation of the Category 1 heritage buildings Riccarton House and Deans cottage in the statutory trusts which govern the activities of the Board; and
 - (h) To authorise the Board to own and manage the property known as 30 Kahu Road.

- (i) To authorise the Board to own and acquire any other land purchased by the Board or gifted to the Board (but not to take on debt to purchase any additional land).
 - (j) To require the Board to adopt a management plan (akin to a formal Reserves Act management plan).
6. The draft Bill has been prepared by the Council's Legal Services Unit working closely with a Working Party appointed by the Board.
 7. The Board has completed a comprehensive consultation process in respect of the draft Bill. Details of that consultation are provided under the heading 'Consultation Fulfilment' below.
 8. Council staff in the Corporate Finance, Legal, Heritage and Reserves areas have had detailed input into the development of the draft Bill and support it in its current form.
 9. Before the Parliamentary procedure to have the draft Bill enacted can commence it is necessary for the Board to formally consult with the Council and for the Council to approve the draft.

FINANCIAL IMPLICATIONS

10. In the 2008/09 financial year the levy imposed under the existing provisions of the Act on the Council by the Board amounts to \$108,310.00. In addition, the Council will pay an annual operating grant of \$145,563.00 to support the Board's activities over and above the amount of the statutory levy. The total sum which will be paid to the Board by the Council in the 2008/09 financial year will therefore amount to \$253,873.00.
11. One of the significant drivers of the Bill for the Board has been the low level of the existing statutory levy payable by the Council, relative to the total sum paid by the Council, and the uncertainty, in terms of the Board's budgeting, created by the fact that the balance of the Council's funding is currently provided by way of annual grant. In addition, the current funding arrangements between the Council and the Board do not encourage the Board to plan or budget in the long term.
12. The draft Bill does not propose to alter the total level of funding support provided by the Council to the Board. However, the Bill, if enacted, will alter the process or mechanism by which the level of funding is arrived at and will encourage the Board to plan or budget on a more long-term basis.
13. Currently, section 10 of the Riccarton Bush Amendment Act 1947, provides that the Board may levy "upon the contributories [i.e. the local authorities existing prior to local body amalgamation] an annual contribution not exceeding \$30,000 or such higher amount as all the contributories agree to with the consent of the Minister of Local Government, such contribution to be apportioned pro rata among the contributories upon the basis of total rateable values..." This Council has previously agreed to increases of the levy under section 10 and the current levy is \$108,310 per annum. It is proposed that the levy power under section 10 be repealed and replaced.
14. Section 5 of the Bill recognises that the old contributories have been abolished and replaced by the Christchurch City Council alone. It also proposes that the Board will be required to adopt a Ten-Year Financial Plan, which must be approved by the Council. Each Ten-Year Financial Plan is required, in a similar fashion to the Council's LTCCP, to be for a term of three years and to be renewed at the end of each three year period. Each Ten-Year Financial Plan is required to contain the proposed annual operational budget (including revenue and expenditure) for the Board for the first three years of the ten-year period to which it relates. If the Council approves the Ten-Year Financial Plan then the Council will then be bound to pay to the Board the levy detailed in that plan for the ensuing three year period. Provision is made in the draft Bill for adjustment to the levy amount if that should be required after the adoption of a Ten-Year Financial Plan.

15. Effectively, this mechanism creates a compromise between the Board's desire to have certainty of income through an ability to levy the Council and the Council's desire to control and plan for its obligations to the Board. This arrangement will give the Board the certainty of knowing the level of its income (expressed as a levy) from the Council for each three year period, but will also allow the Council the ability to control the amount of the levy through the mechanism of Council approval of the Ten-Year Financial Plan.
16. The inclusion of the requirement to adopt a Ten-Year Financial Plan will also have the benefit of imposing a planning and budgeting obligation on the Board, which is currently not present under the existing statutory regime.
17. The draft Bill specifically aligns the timing of the Board's preparation and adoption of its Ten-Year Financial Plan to the Council's preparation of its LTCCP, with the first Ten-Year Financial Plan being required to be in place by the commencement of the 2012/2015 LTCCP on 1 July 2012.
18. As it is not expected that the Bill would be enacted until later this year or in 2010, and as the Bill does not require the adoption of the first Ten-Year Financial Plan until the year commencing 1 July 2012, the existing funding arrangements between the Council and the Board will continue until the year ending 30 June 2011.

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

19. Yes, the enactment of the proposed Bill will not have the effect of altering the level of financial support provided to the Board by the Council.

LEGAL CONSIDERATIONS

20. As the constitutional provisions governing the management and operation of Riccarton Bush and Riccarton House are contained in the Riccarton Bush Act 1914 any change to these provisions require the enactment of an amendment bill by Parliament.
21. As the Board is a 'Council-controlled organisation' for the purposes of the Local Government Act 2002 it will be necessary for the Council to approve the form of the draft Bill.
22. The Board adopted the view that the better approach to this task was to leave the current Act substantially in place, but to promote an amendment bill. The alternative approach would have been to repeal the Act in its entirety and to enact a new statute in its place.
23. As summarised in paragraph 4 of this report, the purpose of the draft Bill is to achieve a range of specific objects. The succeeding paragraphs of this part of the report discuss each of those objects on detail.
24. **Object 1 - To amend and update the constitution of the Board to reflect the reform of local government which took place in 1989.**

The current Act provides that there are nine members of the Board who hold office for five years and who are appointed as follows:

- (a) by the Christchurch City Council – 2 members
- (b) by the family of John Deans – 2 members
- (c) by Waimairi County Council – 1 member
- (d) by Heathcote County Council – 1 member
- (e) by Paparua County Council – 1 member
- (f) by Riccarton Borough Council – 1 member
- (g) by the Royal Society of New Zealand, Canterbury Branch – 1 member

Since the reorganisation of local government in 1989 the Christchurch City Council has, pursuant to the 1989 order-in-council giving effect to that reorganisation, exercised the power of appointment of the 6 members previously appointed by the old local authorities. Since that time the Council has appointed four trust board members and the Riccarton/Wigram Community Board has appointed two trust board members

Section 2 of the draft bill, recognising the impact of the local body amalgamation process that was implemented in 1989, proposes that the nine members of the Board are to be appointed as follows:

- (a) 5 persons by the Christchurch City Council (2 of whom are to be elected members of the Council, 2 of whom are to be elected members of the Riccarton/Wigram Community Board or an adjacent Community Board and 1 of whom is to be an additional appointee who need not be, but could be, an elected member).
- (b) 2 persons by the family of John Deans.
- (c) 1 person by the Royal Society of New Zealand, Canterbury Branch.
- (d) 1 additional person by the Board (to enable the Board to engage specific expertise as required from time to time).

Whilst the number of Council appointees on the Board are proposed to reduce from 6 to 5, the Council will still continue to appoint a majority of trustees and accordingly the Board will continue to be a 'Council-controlled organisation' for the purposes of the Local Government Act 2002.

Section 3 of the draft bill also proposes that the members of the Board appointed by the Council (including community board appointments) hold office for three years or for so long as they hold office as a councillor or community board member, whichever is the lesser. It is proposed that other board members will hold office for five years, although the additional Board member may be appointed for a different period as required. All board members may be re-appointed at the expiry of their term of office.

25. Object 2 - To update the statutory functions of Board.

The functions of the Board are not currently specified in the Act and accordingly section 4 of the draft Bill specifies these in general detail. In addition, the draft Bill proposes that the Board shall have the express power to delegate some of its functions and to appoint committees. These powers are not contained in the existing Act.

26. Object 3 - To amend the existing power of the Board to impose on the Council an annual levy to reflect the reform of local government which took place in 1989 and to align the levy with current practice and the Council's planning processes.

Please see the discussion above under the heading 'Financial Implications'.

27. Object 4 - To require the Board to undertake better financial budgeting through the preparation of a 'Ten-Year Financial Plan' to be approved by the Council.

Please see the discussion above under the heading 'Financial Implications'.

28. Object 5 - To extend the Board's existing limited leasing powers and to permit the imposition of hire charges for the use of Riccarton House, Deans Cottage, the grounds and the Bush (but preserving free public entry to those facilities).

Under the existing Act the current leasing powers of the Board are limited to leasing Riccarton House for periods of not exceeding one year for "committee rooms, charity bazaars, fairs, or flower shows, or art or other cultural exhibitions, or for purposes concerned with the pursuit of health, instruction, or recreation, or for use for all or any of the following purposes – namely, community centre, creche, kindergarten, tea-kiosk, museum, or art or culture centre".

The draft Bill proposes, in sections 8(1)(b) and 10, that the power to lease be extended to include all of the property vested in the Board, not just Riccarton House, and that such power not be restricted to specific stated purposes as currently.

The draft Bill expressly preserves the right of the public to free entry to Riccarton Bush and the other lands vested in the Board.

29. **Object 6 - To increase the fine that the Board may impose for a breach of a by-law made by the Board under the Act from the existing maximum level of \$40 to a new maximum level of \$1000.**

Section 15 of the current Act authorises the Board to make by-laws for certain purposes and permits the imposition of a fine of up to \$40 for breaches of any such by-laws. It is proposed in section 8(1)(d) of the draft Bill to increase the maximum possible fine to \$1000 to reflect inflation.

30. **Object 7 - To make specific reference, for the first time, to the restoration, maintenance and conservation of Riccarton House and Deans cottage in the statutory trusts which govern the activities of the Board.**

The current Act specifies that the lands vested in the Board are held upon trust for:

- (a) the preservation and cultivation of trees and plants indigenous to New Zealand (except, recognising the existing predominance of exotic species, the grounds around Riccarton House which may also be used for the planting and cultivation of trees, shrubs, and plants whether indigenous to New Zealand or otherwise); and
- (b) the use and enjoyment of the public for the purposes of health, instruction and recreation.

The current Act makes no reference in the statutory trusts to the buildings known as Riccarton House and Deans Cottage. Accordingly, section 9 of the draft Bill proposes to include "the restoration, maintenance and conservation of the buildings known as Riccarton House and Deans Cottage and the grounds around those buildings" as one of the Board's statutory trusts.

31. **Object 8 - To authorise the Board to own and manage the property known as 30 Kahu Road.**

In 1975 the then five contributing local authorities (Christchurch City Council, Waimairi County, Heathcote County, Paparua County and the Borough of Riccarton) agreed to fund the purchase of an additional property to form part of Riccarton House and Bush known as 30 Kahu Road. This property, comprising 3339m² and situated on the northern side of the main driveway adjacent to the Avon River, was purchased from the Estate of R.L. Deans for the then market value of \$90,000. As the Act did not, and does not, authorise the Board to hold this property, it was, and continues to be, held subsequent to purchase in the name of the Christchurch City Council. None of the various amendments to the Act that have been enacted have dealt with this issue and consequently the property remains in the legal ownership of the Christchurch City Council, albeit within the de facto management responsibility of the Board.

It is clear from the records associated with the purchase of this property that it was the intention that this property was transferred to the Board when the Act permitted it. Section 11 of the draft Bill therefore contains express provisions vesting this property in the Board and making it subject to the same statutory trusts as apply to the other lands vested in the Board.

The application of section 138 of the Local Government Act 2002 to this proposed vesting is discussed in paragraphs 44 to 46 of this report.

32. **Object 9 - To authorise the Board to own and acquire any other land purchased by the Board or gifted to the Board (but not to take on debt to purchase any additional land).**

The way that the Act has been crafted is such that it only authorises the Board to own such land as is expressly authorised in the Act. The Board, however, wishes to have the power to accept by way of gift or bequest any other land and also the power to purchase other land. It should be noted that neither the Act, nor the draft Bill, authorise the Board to borrow money. Accordingly, in practical terms, the only way that the Board could fund the purchase of any additional land would be from its own accumulated cash resources or with the assistance of the Council.

33. **Object 10 - To require the Board to adopt a management plan (akin to a formal Reserves Act management plan).**

As the lands vested in the Board are held under the Act, and not under the Reserves Act 1977, the Board currently has no statutory obligation to prepare a management plan in respect of the lands vested in it.

Section 12 of the draft Bill therefore proposes that the Board be required to adopt a Reserves Act type management plan. Section 12 has been modelled on the relevant provisions of section 41 of the Reserves Act 1977.

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

34. Yes, see detailed discussion above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

35. Yes, the enactment of the proposed Bill will not have the effect of altering the level of financial support provided to the Board by the Council or the delivery of any of the Council's activities.

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

36. Yes.

ALIGNMENT WITH STRATEGIES

37. Yes.

Do the recommendations align with the Council's strategies?

38. Yes.

CONSULTATION FULFILMENT

39. The Board has completed a comprehensive consultation process in respect of the draft Bill, including consultation with the following:

- (a) neighbouring property owners
- (b) the general public
- (c) New Zealand Historic Places Trust
- (d) Department of Conservation
- (e) Te Runanga o Ngai Tahu
- (f) Environment Canterbury
- (g) the Deans family
- (h) The Royal Society of New Zealand, Canterbury Branch.
- (i) Fendalton/Waimairi Community Board
- (j) Riccarton/Wigram Community Board
- (k) Fendalton Scout Group (which occupies part of the grounds)
- (l) Taste Catering Limited (which tenants part of the House)
- (m) Audit New Zealand
- (n) Inland Revenue Department
- (o) Charities Commission

40. The consultation process was commenced on 30 September 2008 with the Board forwarding a summary of the proposed Bill, together with a full copy of it, to all of the organisations listed above. Recipients were invited to make written submissions on the proposal to the Board by 5 December 2008 and asked to indicate whether they wished to be heard by the Board in support of their submissions. In addition, a public notice was published in the 'Christchurch Press' newspaper on two separate occasions (Saturday and Wednesday) seeking public submissions on the proposal by the same date. Further, approximately 95 summaries of the proposed Bill were delivered by the Board to all neighbouring property owners seeking public submissions on the proposal by the same date.

41. The Fendalton/Waimairi Community Board received a detailed briefing on the draft Bill from the Board's Manager, Rob Dally, and subsequently acknowledged general support for the draft Bill in writing to the Board. The Riccarton/Wigram Community Board did not take up the offer of a briefing, but indicated in writing to the Board its general support for the draft Bill.
42. In response, 10 submissions or letters were received by the Board. Nine of those submissions took the form of letters stating general support for the draft Bill and were received from New Zealand Historic Places Trust, Ngai Tahu, Department of Conservation, Fendalton/Waimairi Community Board, Riccarton/Wigram Community Board, Inland Revenue Department, Charities Commission, The Royal Society of New Zealand Canterbury Branch and the Deans Family. One submission was received from a member of the public, and he was provided with an opportunity to personally present his submission to the Board appointed Working Party responsible for the draft Bill. That submitter was generally supportive of the draft Bill.
43. It is not considered that the Council's decision to approve the draft Bill and to support its enactment would constitute a matter of significance in terms of the Council's Significance Policy.
44. The proposal in section 11 of the draft Bill to vest the property known as 30 Kahu Road in the Board raises the question of the relevance of section 138 of the Local Government Act 2002. Section 138 requires the Council to consult on any proposal "to sell or otherwise dispose of a park" before it agrees to such sale or disposal. On the basis that the 30 Kahu Road property would certainly constitute a "park" for the purposes of that section, the question is therefore whether the Council approving the draft Bill and supporting its enactment would constitute a "sale or a disposal".
45. Research has revealed that at the time of the original acquisition of the land in 1975 the Council resolved on 15 September 1975 *"that when in a position to do so, the territorial local authorities concerned arrange to have the land transferred to the Riccarton Bush Trust"*. The land has not been transferred to the Board before now as the Act has not permitted the Board to own it. Enactment of the draft Bill will allow that to occur and indeed, section 11 of the draft Bill will vest the land in the Board. Notwithstanding the passage of time, it is therefore arguable that given that the Council has already resolved to transfer the land to the Board in compliance with the law as it then stood, and before the enactment of section 138, that a new resolution to approve the draft Bill and support its enactment will not constitute a "disposition" of the land requiring compliance with section 138. Essentially, the resolution of the Council to dispose of the land was made in 1975 before section 138 came into existence.
46. In any event, the draft Bill containing the vesting provision in relation to 30 Kahu Road, has been comprehensively consulted on by the Board as detailed above. In view of this, and given that "the views and preferences of the persons likely to be effected by, or likely to have an interest in, the matter" are therefore known, it is considered that the Council need not undertake any further consultation on this point, or indeed on the draft Bill generally for the same reason. Further the process of the Bill going through the Parliamentary process will involve the opportunity for the public to make submissions on the Bill.

STAFF RECOMMENDATION

It is recommended that the Council resolves:

- (a) To approve the draft Riccarton Bush Amendment Bill and to support its enactment into law.
- (b) To authorise Council staff to make a submission in support of the Bill to the Select Committee considering the draft Bill.

BACKGROUND

47. Riccarton House and Riccarton Bush are vested in the 'The Riccarton Bush Trustees', a board constituted by the Act.
48. The land known as Riccarton Bush (15 acres) was gifted to the "the Mayor of the City of Christchurch as the representative of the people of Canterbury" by members of the Deans family in 1914. The Act was passed by Parliament in that year to constitute the Board and to provide for the preservation and management of Riccarton Bush.
49. In 1947, the Christchurch City Council joined with Waimairi County, Heathcote County, Paparua County and the Borough of Riccarton to purchase for market value an additional area of 13 acres (being Riccarton House and the associated grounds) for the Board's purposes. To authorise the acquisition and management of this additional area of land by the Board the Act was amended by the Riccarton Bush Amendment Act 1947.
50. Subsequently, the Act has been the subject of minor technical amendments enacted by Parliament in 1949, 1964, 1972 and 1979.
51. In 1975 the then five contributing local authorities (Christchurch City Council, Waimairi County, Heathcote County, Paparua County and the Borough of Riccarton) agreed to fund the purchase of a further additional property known as 30 Kahu Road. This property, comprising 3339m² and situated on the northern side of the main driveway adjacent to the Avon River, was purchased from the Estate of R.L. Deans for the then market value of \$90,000. As the Act did not, and does not, authorise the Board to hold this property, it was, and continues to be, held subsequent to purchase in the name of the Christchurch City Council. None of the various amendments to the Act have dealt with this issue and the property remains in the legal ownership of the Christchurch City Council, albeit within the de facto management responsibility of the Board.