

#### 4. PROPOSED CHRISTCHURCH CITY PARKS & RESERVES BYLAW 2008

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941-8656
<b>Officer responsible:</b>	Network Planning Unit Manager
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##### PURPOSE OF REPORT

1. To outline the background and options relating to the review of the present Parks & Reserves bylaws that are in place and to recommend that the Planning and Regulatory Committee adopt and recommend to Council:
  - (a) that there is a requirement for a new Parks and Reserves Bylaw to be made to control activities on Parks and Reserves not covered by other bylaws or acts of Parliament and,
  - (b) that Council adopt the attached draft Parks and Reserves Bylaw for putting out for public consultation.

##### EXECUTIVE SUMMARY

2. The Local Government Act 2002 requires many of our bylaws to be reviewed in order to determine that they are still necessary, that they are appropriate and that they meet the purpose that they were designed for. This report forms part of the review of the seven bylaws or parts of bylaws that are still operative, the bylaws having not been reviewed since the earlier amalgamation of local authority areas in Christchurch in 1989. The bylaws are:
  - Christchurch City Council Bylaw 118 – Parks and Reserves 1981
  - Christchurch City Council Bylaw 120 – Avon Heathcote Estuary and Rivers 1982
  - Banks Peninsula District Council Bylaw – Parks and Reserves 2003
  - Heathcote County Council Bylaw – Reserves 1933 (No.1)
  - Riccarton Borough Council Bylaw (No.1) part 8 Parks and Reserves
  - Waimairi County Council Bylaw (No.1) – 1966 part vii Reserves and Domains
  - Paparoa County Council General Bylaw – 1981 section 15 Reserves.
3. Officers are recommending after undertaking a section 155 evaluation of the present bylaws that a consolidated, rationalised and modernised parks and reserves bylaw is the most appropriate way of addressing a number of potential problems relating to parks and reserves, and has prepared a draft parks and reserve bylaw for further consideration. The proposed Parks and Reserves Bylaw covers the regulation of:
  - appointment of park guardians
  - closing of parks and reserves to the public
  - behaviour in reserves
  - control of protected areas
  - control of animals
  - control of the use of water
  - control of vehicles, other traffic, mechanical devices and vessels
  - prohibition of fires
  - prohibition of camping
  - control of aircraft
  - control of sports and games
  - provisions for special areas:
    - Botanic Gardens
    - Rawhiti Golf Course
4. This report outlines the options<sup>1</sup> for the draft new Parks and Reserves Bylaw:
  - Option one: Status quo, retain the seven bylaws
  - Option two: Revoke the seven bylaws or relevant parts of them and create a consolidated bylaw
  - Option three: Revoke the seven bylaws or relevant parts of them and create a consolidated, rationalised and modernised parks and reserves bylaw.

<sup>1</sup> This is required under s.77 of the Local Government Act 2002

5. The recommended option is option three. A draft bylaw (attached as attachment 1) has been prepared for Councillors' consideration, rationalising and modernising the seven bylaws, and amalgamating them into one single, new bylaw. This option will best meet the requirements of section 155(2) of the Local Government Act (at a broad, overall level), that the bylaw, which officers are recommending to Council is required, will be in the most appropriate form.
6. The object of this Bylaw is to provide for the orderly management and control of parks and reserves vested in or under the control of the Council for the benefit and enjoyment of all users of those parks and reserves.<sup>2</sup>
7. Existing bylaw clauses were assessed to see whether:
  - the issues they were designed to address still exist
  - the issues are significant, either by frequency or seriousness
  - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
  - the issues are covered by new or amended legislation
  - the clauses are reasonably able to be enforced, and
  - the clauses are consistent with the Bill of Rights Act.

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

8. A number of the existing clauses in the bylaws do not meet the above tests, and they have therefore being removed. A number of clauses are duplicated in other bylaws for example the Proposed "Public Places Bylaw", "Sale of Liquor Act" or "Liquor Control Bylaw". A number of the existing clauses are also redundant because of new legislation for example "Resource Management Act 1991" and "Litter Act".
9. Advice from the Legal Services Unit and the Inspections and Enforcement Unit suggests that behavioural clauses are very difficult for local authorities to enforce, as the only tool available for enforcement under the particular bylaw-making powers is prosecution.<sup>3</sup> Taking a prosecution requires a high level of proof, which can be difficult for behavioural issues. The minor nature of some behavioural matters also makes the cost of taking a prosecution disproportionate to the harm being caused. A further factor is the likely age of offenders (who may have to be prosecuted through the Youth Court). Additionally, it is often difficult to establish the identity of the offender.
10. Behavioural clauses in bylaws are very difficult for local authorities to enforce. For example, the Council has not taken a prosecution under the parks and reserves behavioural clauses (which have been in parks and reserves bylaws for over two decades) for the above and other reasons, even though behavioural type issues are clearly a problem, there being over 237 requests for service (over 50% of total received) with the Call Centre over the 2 year period from 1 June 2005 to 30 June 2007. There are more effective tools available for addressing behavioural issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act 1981 and Crimes Act 1961, which the Police enforce. The Council through its ranger service is also able to bring private prosecutions under these and other acts, this being confirmed by legal advice.
11. In the past rangers and officers have been very successful in obtaining compliance with the previous bylaws through education. Officers believe that this educational approach for dealing with transgressions should be continued in the future.
12. Including clauses that cannot easily be enforced within the bylaw may lessen the credibility of other clauses in the bylaw, may falsely raise public expectations and may divert the focus away from practical solutions to address such issues.

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<sup>2</sup> Local Government Act 2002 – Powers of territorial authorities to make bylaws - Section 145(a) to protect the public from nuisance; Section 145(b) protecting, promoting and maintaining public health and safety; and Section 146(b)(iv) [regulating or protecting from damage, misuse or loss or preventing the use of] reserves, recreation grounds, or other land under the control of the local authority.

<sup>3</sup> Parliament has not yet introduced any infringement offences in relation to these matters.

13. The question before Councillors is not whether an issue (for example, vehicles, other traffic and mechanical devices) is a problem; the question is whether a bylaw is an *appropriate or effective tool* for managing the issue.<sup>4</sup> This report suggests that there are other tools that are more appropriate than a bylaw to address matters such as, behaviour, damage, acts of cruelty against animals, littering and alcohol, substance abuse in public places. Additionally, the new parks and reserves bylaw is intended to regulate *lawful* activities. The behavioural matters are already unlawful due to their coverage under the Summary Offences and Crimes Acts.
14. If the Council adopts the attached draft bylaw, it will go out for public consultation in accordance with the Special Consultative Procedure outlined in sections 83 and 86 of the Local Government Act 2002.

## SECTION 155 CONSIDERATIONS

15. The Local Government Act requires local authorities to determine whether a bylaw is the most appropriate way of addressing the perceived problems (section 155(1) of the Act), in other words that the Council is satisfied that a bylaw is necessary, and the perceived problems cannot be dealt with in any other manner.
16. A useful guide to considering the matters under section 155 (as quoted above) is the *Code of Good Regulatory Practice, 1997* which suggests the following should be considered:
  - Efficiency by adopting only regulations for which the costs to society are justified by the benefits. To achieve objectives at the lowest cost taking into account alternatives.
  - Effectiveness to ensure it can be complied with and enforced at the lowest possible cost.
  - Transparency by defining the nature and extent of the problem and evaluating the need for action.
  - Clarity in making things as simple as possible, to use plain language where possible, and keeping discretion to a minimum.
  - Regulation should be fair and treat those affected equitably. Any obligations or standards should be imposed impartially and consistently.<sup>5</sup>
17. In addition guidance provided by Local Government New Zealand states the following matters should be taken into account at this stage: *What is the problem?; Have we got enough information?; Who is affected or interested?; What is our objective?; What is the root cause of the problem – not the symptom?*<sup>6</sup> In the following paragraphs these issues are addressed in the context of determining a need for any bylaw.<sup>7</sup>
18. An individual review of all the bylaws (7) that the new proposed bylaw is to replace could have been undertaken, however it was decided to investigate all the issues covered in the previous bylaws. A list of all possible clauses was compiled from the existing bylaws, which were then subjected to the section 155 of the Local Government Act 2002 tests as elaborated upon above.<sup>7</sup> The Clause by clause analysis is attached to this report as attachment 2. The clauses were assessed to see whether:
  - the issues they were designed to address still exist
  - the issues are significant, either by frequency or seriousness
  - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
  - the issues are covered by new or amended legislation
  - the clauses are reasonably able to be enforced, and the clauses are consistent with the Bill of Rights.

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<sup>5</sup> Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

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

<sup>7</sup> The Council Decision-making Guide, as well as the Local Government New Zealand guide on regulation and enforcement, require taking into account: the identification of the problems being addressed; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

19. In the following paragraphs the clauses are addressed in the context of determining a need for a bylaw. The requests for service from the public on bylaw matters that was sent through to the Park Ranger service to attend to was also perused for the two year period from 1 June 2005 through to 30 June 2007. Over half of this period was after the amalgamation of the Banks Peninsular District, and Christchurch City Councils, which occurred on the 5 March 2006. A number of areas for which complaints have been received in the past are not represented on this list, because they were sent through to other divisions of Council, or other authorities to attend to. Information on the number of these complaints during this period is not available and in all except in one area has been removed from the bylaw because the issue is able to be dealt with in a more appropriate way using other bylaws or legislation. Legal input into this evaluation process was obtained to ensure that the reasoning behind a particular clause being retained or not in the proposed bylaw was sound.
20. "Appointment of Rangers and Park Guardians" The appointment of officers to enforce the provisions of this bylaw will be authorised by the Christchurch City Council General Bylaw 2008. There is no need to appoint officers/rangers for the purpose of this bylaw. The word ranger is not used in the bylaw. Rangers are appointed by the Council under section 8 of the Reserves Act 1977 for the purpose of enforcing the provisions of the act as they relate to reserves which are subject to that act. This appointment process is able to be delegated from Council under the provisions of the Local Government Act. There is however no such provision for people that are not staff so this section has been retained in part in the bylaw. Park Guardians will have education and reporting roles only, not enforcement ones.
21. "Reserves Open to the Public" This section has been retained in the bylaw, because the power to close a public reserve is contained in the Reserves Act 1977 for recreation reserves only, not for other types of reserves held under this Act. Parks and reserves held under the Local Government Act 2002 can be closed under the power of general competence (s12).
22. "Vandalism" and "Misbehaviour" sections The majority of these sections have been removed from the Bylaw, the Council having powers under the Summary Offences, Crimes, Wildlife, and Animal Welfare Acts to issue warnings and bring private prosecutions under these Acts. The officer of the Council (it could be a park ranger), would be the officer in charge, and would swear the information on behalf of Council appearing in court as the main witness. The sections retained are:
  - bury or disturb anything in a reserve for parks and reserves which is held under the Local Government Act,
  - walk on prohibited areas, for example after new grass is sown under both acts,
  - bolt, drill or place any fixture, plaque or sign within a reserve for parks and reserves held under the Local Government Act.
  - leave gate in different position than that which it is found is required because of stock grazing on many of the Council regional parks.
23. Over the 2 year period 237 requests for service were received for vandalism/behaviour issues, this representing over 50% of the total number of requests received by the ranger service. (see attachment 3)
24. "Control of Protected Areas" This section has been retained in the bylaw because although there are the powers of general competency under the Local Government Act 2002 for parks and reserves held under this Act, and for recreation reserves held under the Reserves Act 1977, this is not the case for other types of reserves.
25. "Animals" This section has been retained to enable rangers, and authorised officers to control animals other than dogs upon parks and reserves. The control of dogs on the six reserves, all of which are held under the Reserves Act 1977, situated within the Selwyn District Council area is set out in the "Legal Considerations" section 43 below. The control of dogs on Council owned, and managed and controlled park and reserve areas is adequately addressed in the proposed Dog Control Bylaw 2008. Over the 2 year period 16 requests for service were received for stock (including dogs and animals), this representing over 3% of the total number of requests received by the ranger service. The author suspects that many of the dog related requests received from the public were passed directly on to the dog rangers to address, these not being recorded with the rangers as requests for service.

26. "Control of the Use of Water" Environment Canterbury are responsible for ensuring pollution of natural bodies of water does not occur, and if pollution does occur to take legal action against the offenders, however this does not extend to artificially created lakes and ponds owned by the Council, hence the reason for including this provision in the bylaw. The water in some of the bodies of water is of a low quality not fit for human recreation purposes, because of wildfowl, therefore swimming in these bodies must be prohibited for health reasons. No requests for service were received in the 2 year period concerning water pollution issues by the rangers. All water quality related requests if received by the Council are forwarded to Environment Canterbury to address.
27. "Vehicles and Other Traffic" A general provision should be retained in the bylaw about vehicles and their safe use in parks and reserves. Officers are also recommending that the relevant sections of the 'Traffic and Parking Bylaw be transferred to the 'Parks and Reserves Bylaw' because this is where the issues are most appropriate dealt with. Ninety eight requests for service were received on vehicle and traffic related issues on parks and reserves over the 2 year period, this being approximately 21% of the total number of requests received by the ranger service.
28. "Prohibition of Fires" This section is being retained in the bylaw because although section 94(1)(a) of the Reserves Act applies to lighting fires on land held under that Act, it does not apply to parks and reserves held under the Local Government Act. Clause 11 (1) is also less permissive than clause 8 'Restrictions on fires in the open air' in the draft 'Fire Safety Bylaw'. Eleven requests for service were received over the 2 year period this being approximately 2.5% of the total number of requests received. More urgent requests concerning fires out of control on park and reserve land would be registered with the fire department through the 111 system.
29. "Camping" This section is being retained in the bylaw because a clear prohibition on camping on reserves where it is not permitted is a more effective deterrent than otherwise having to resort to the Trespass Act, one of the issues being that under this Act a warning must always be given before effective legal action can be take. Eighteen requests for service were received over the two year period, this being over 4% of the total number of requests received by the ranger service. These being in addition to all the requests received by the 4 camping grounds (2 leased) which are located on Council parks and reserves.
30. "Aircraft" This section is being retained in the bylaw, because there is a need to control aircraft (the interpretation used in the bylaw is in the widest sense, which will be discussed further in the 'Legal Considerations section 45 of the report) because of the health and safety concerns for the public using parks and reserves. The two district plans (Christchurch City and Banks Peninsula) provide some control from a planning perspective; however the Council needs to be satisfied that the public's safety is not at risk when a landing or take-off takes place from park or reserve. No offences took place over the two year period, although permission was granted for a number of landings and take-offs.
31. "Sports and Games" This section has been retained in a reduced form in the bylaw to ensure that organised sport is played on an appropriately marked field, and to ensure that when the sport is played other members of the public don't encroach onto the playing area. Officers are of the view that there is a need to clearly re-enforce what dressing sheds and toilets are to be used for, the author being aware of problems occurring in these three areas in the past. Nineteen requests for service in this category were received over the two year period this being approximately 4% of the requests received.
32. "Special Provisions – Botanic Gardens" This section is being retained in the bylaw because of the large number of people visiting the park annually. The large numbers of people at times do cause congestion problems and consequently public health and safety issues. There is also a number of very important plant collections, some of which are very rare planted in the Botanic Gardens. The inclusion of appropriate special sections in the bylaw allows appropriately authorised officers in the gardens to take immediate action to stop a transgression of the bylaw without the necessity to involve the police.
33. "Special Provisions – Rawhiti Golf Course" This section is being retained in the bylaw to ensure unauthorised access to the golf course does not occur, because of public health and safety issues arising out of legitimate uses playing the game of golf.

34. "Special Provisions – Foreshore" Most of this section is deleted from the bylaw as two of the three sub-sections dealt with vandalism and misbehaviour issues, therefore the reason that they are not being included is the same as stated in section 21 above. The enactment of the Foreshore and Seabed Act 2004 clearly placed ownership of the foreshore in the Crown, and therefore a number of clauses in previous bylaws are now invalid. This issue is elaborated upon in the 'Legal Considerations' section of the report. The retained clause being the hauling out of a vessel onto the foreshore for laying up or wintering over purposes. This specific action is not covered by other bylaws or legislation, and does occur. While such an action may not become a nuisance to other members of the public using the foreshore, there are other issues that need to be considered such as public liability issues.
35. Consideration was given to including a new section entitled "Special Provisions – Paddling Pools" because the current Public Swimming Pools Bylaw is being revoked. It was decided to address the issues raised by the revocation of the bylaw by a combination of signs at each paddling pool indicating the expected behaviours when using the pool, this being backed up where necessary using the Trespass Act.

#### **FINANCIAL IMPLICATIONS**

36. It is not anticipated that the adoption of the bylaw, as proposed, will adversely impact on enforcement demands, and in some areas may be more cost effective, because of the deletion of some clauses the activities covered by these clauses being better addressed by other bylaws, or legislation.
37. There are 25 park rangers who provide ranger services to the public 365 days per year. This service is primarily provided during normal work day hours; however ranger services are extended to 24 hours a day on a call-out basis. The rangers are based at the regional parks which are located around the outside of the former city area, (Groynes, Bottle Lake, and Victoria Park).
38. Existing rangers based at the Victoria Park Ranger station are able to adequately cover issues in the Lyttelton Harbour basin (Lyttelton Mt Herbert Community Board area). There is an issue however with providing adequate ranger services on the balance of the Peninsula (Akaroa Wairewa Community Board area). This board area is the largest in the city making up approximately a third of the total area of the city. Many of the park, reserve, and foreshore areas within this area are of high ecological value with recreation and coastal facilities, and consequently have to be sensitively and properly managed. There is a need to provide a better Council staff presence in this area, there was a dedicated person employed to look after bylaw issues including dog control in this area by the previous Banks Peninsula District Council. This person left the Council's employment, and has not been replaced. A Council officer based in this area would not only look after bylaw matters (dog issues will be actioned by dog rangers), but would be available to oversee maintenance and capital programs and other such work within regional and local parks within the area. It has been estimated that approximately one third of the officers time would be spent on bylaw (proposed Parks and Reserves, and Marine and River Facilities Bylaws monitoring, education, investigation, evidence collection, taking prosecutions, etc) and related matters, the time spent being more in the summer, and less in the winter. It has been estimated that would cost approximately \$75,000 a year to base an officer in this area, this cost including the provision of a vehicle, office space, equipment, and salary. Approximately \$25,000 of which would be spent on bylaw and related matters.

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

39. The budgets for the City Environment group of activities in Christchurch's Long Term Council Community Plan (LTCCP) make general provision for the enforcement of bylaws.
40. A request for additional budget to finance a further parks officer position to service the Akaroa Wairewa Community Board area will need to be made through the LTCCP process.

## LEGAL CONSIDERATIONS

41. The following bylaws have been considered as part of this review:
- Christchurch City Council Bylaw 118 – Parks and Reserves 1981
  - Christchurch City Council Bylaw 120 – Avon Heathcote Estuary and Rivers 1982
  - Riccarton Borough Council Bylaw (No.1) part 8 Parks and Reserves
  - Heathcote County Council Bylaw – Reserves 1933 (No.1)
  - Waimairi County Council Bylaw (No.1) – 1966 part vii Reserves and Domains
  - Paparoa County Council General Bylaw – 1981 section 15 Reserves
  - Banks Peninsula District Council Bylaw – Parks and Reserves 2003
42. The Local Government Act 2002 requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008.<sup>8</sup> The first six of the bylaws fit into this category. However, the seventh, the Banks Peninsular District Council Parks and Reserves Bylaw 2003, was made under the Local Government Act 2002 and does not need to be reviewed until 2009.<sup>9</sup> Due to the amalgamation of the BPDC with the CCC, and the need to align the legislation across the new jurisdiction, it is appropriate to review the relevant parts of the BPDC Parks and Reserves Bylaw now, in conjunction with the other parks and reserves bylaws. A new bylaw is to be put in place
43. The Local Government Act 2002 allows local authorities to make bylaws to cover certain things or situations. Section 145 of the Act covers general bylaw-making powers. These allow local authorities to make bylaws for the purposes of protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and minimising the potential for offensive behaviour in public places. Section 146 of the Act contains specific bylaw-making powers. Of relevance to this report, is section 146(b)(vi), which allows local authorities to make bylaws for the purpose *'of managing, regulating against, or protecting from, damage, misuse, or loss, or for the preventing the use of, the land, structures, or infrastructure associated with --- reserves, recreation grounds, or other land under the control of the local authority.* The proposed parks and reserves bylaw covers aspects of all of the above mentioned sections.
44. Section 146(b)(vi) of the Local Government Act states that *a territorial authority may make a bylaws for its district for the purposes--- of managing, regulating against, or protecting from, damage, misuse, or loss, or for the preventing the use of, the land, structures, or infrastructure associated with --- reserves, recreation grounds, or other land under the control of the local authority.* The underlining of the words is the authors' emphasis. The Council under the Local Government Act therefore can not make a bylaw to cover land outside its district.
45. The Council can however make a bylaw to cover land held under the Reserves Act under section 106, the reserves in question having to be under the Council's control.<sup>10</sup> The Council owns or controls and manages 6 Regional Parks, namely Kennedys Bush, Cass Peak, Otahuna Reserve, Coopers Knob, Ahuriri Scenic Reserve and Orongamai Reserve which are located within the Selwyn District Council area. All these parks are held pursuant to the Reserves Act 1977, and therefore only bylaws made under this act will apply to these reserves. Bylaws made under the Reserves Act 1977 apply to only land held under that Act.
46. Section 94(1)(b) of the Reserves Act creates an offence in relation to any person who, without authorisation, *"causes or allows cattle, sheep, horses or other animals of any kind whatsoever to trespass on any reserve"*. Section 94(1)(c) creates an offence in relation to a person who, without authorisation, *"liberates any animal on any reserve"*. Section 94(2)(a) goes on to provide that an offence is committed by any person who *"when required by notice from the... administering body to remove any animal from a reserve, fails to do so within the period specified by the notice"*. Therefore it is not necessary to make a bylaw for the control of dogs on the reserves held under the Reserves Act which are located outside the City boundary.
47. Section 94(1)(l) of the Reserves Act prohibits people trespassing on reserves with aircraft however there is no interpretation for aircraft at the beginning of the Act and therefore it is questionable if this wording covers hot air balloons, paraponts etc.

<sup>8</sup> Section 158 of the Local Government Act 2002 requires bylaws made under the Local Government Act 1974, in force at 1 July 2003, to be reviewed within five years.

<sup>9</sup> As it was made under the Local Government Act 2002, rather than the Local Government Act 1974.

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

48. Offensive behaviour is covered by the Summary Offences Act 1981, Crimes Act 1961, Wildlife Act 1953, and the Animal Welfare Act 1999. For example, the Summary Offences Act covers: offences against public order; offences against persons or property (such as graffiti); intimidation, obstruction and hindering police; indecency; loitering and trespass; and offences relating to nuisances. The Local Government Act does not allow for the issuing of infringement notices (instant fines), so the only option for enforcement by the Council for breaches of the bylaw is to prosecute. It is hard to argue that the cost of taking such a case to Court, given the unlikelihood of a conviction, is in the ratepayers' interest, particularly when the Police already have the powers to deal with these matters under the Summary Offences Act.<sup>11</sup> The Council is able to give warnings and take a private prosecution under the aforementioned Acts. The officer of the Council (it could be a park ranger), would be the officer in charge, and would swear the information on behalf of Council appearing in court as the main witness.
49. In the past rangers and authorised officers have been very successful in obtaining compliance with the present bylaws through education. Officers believe that this approach for dealing with transgressions of the bylaws and other acts of parliament should be continued in the future.
50. Under section 155(2) of the Local Government Act 2002, the Council must determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (the **NZBORA**). Under subsection (3), no bylaw may be made which is inconsistent with the NZBORA, notwithstanding section 4 of that Act.
51. The following legal advice has been received. The bylaw potentially places limits on freedom of movement which is protected by section 18 and also freedom of expression which is protected by section 14. (i.e. section 18 states that everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand, and section 14 states that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.) To some extent, the draft Bylaw restricts freedom of movement by authorising the Council to close reserves at certain times or for certain reasons (clauses 5, 7, 15, 17). The draft Bylaw also restricts freedom of expression by prohibiting people from erecting signs etc without Council permission.
52. However, section 5 of the NZBORA says
  - "...the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."
53. This section means that the Council can proceed with limiting the freedoms in the NZBORA if such a limitation is "*demonstrably justified in a free and democratic society.*"
54. There are good reasons for including these provisions in the bylaw. Some of the limits are already contemplated by the Reserves Act 1977, e.g. section 53 relating to recreation reserves. However, generally, the bylaw, aims to protect the rights of others to use Council reserves which on balance is reasonable. For example, the rules relating to the use of the Botanic Gardens are an attempt to balance the rights of all users to the Gardens. Similarly, the rules relating to the use of aircraft in Council reserves are for public safety purposes. While the bylaw will need to be interpreted in a practical way, the limits in the bylaw are reasonable limits which can be demonstrably justified in a free and democratic society. Consequently, there is a good argument that the draft bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.
55. This report also covers matters relating to section 77 of the Local Government Act. Section 77 relates to decision-making and requires local authorities to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the council's capacity. The options analysis forms the second part of this report.
56. The legal process for reviewing, making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Local Government Act 2002. If the Council agrees to adopt the attached draft bylaw, it is required to appoint a hearings panel, to agree to a submission closing date, and to agree to the draft Statement of Proposal and Summary of Information for consultation (attachment 4 and 5).

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



57. Section 81 of the Local Government Act requires local authorities to establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes. Initial discussions have taken place with the Ngai Tahu runanga Mahaanui Kurataiao (MKT). However, due to the timeframes involved, the number of bylaw reviews for MKT to consider, MKT's early stages of development, and its priorities, effective consultation has not yet taken place. MKT will have the opportunity to express its views on the bylaw review during the Special Consultative Procedure.
58. When compiling the list of possible clauses to include in the new bylaw officers concentrated on the clauses in the former Christchurch City Council Parks and Reserves Bylaw, because it addressed the issues prevailing on parks and reserves at the time. The former Banks Peninsula District Council adopted the Parks and Reserves Bylaw without change. As the model bylaws were designed for adoption by any local authority, they are quite generic and are not necessarily relevant to the unique conditions of the new Christchurch City Council area. The clauses of the other bylaws were perused when compiling the list of possible clauses to include in the new bylaw, however the revoking of the Parks and Reserves Bylaws that are still current from pre the 1989 local authority amalgamation is mainly an administrative tidy up.
59. Bylaws made under the Reserves Act need to be signed off by the Minister of Conservation, before they are enforceable under the Reserves Act. There are no delegations from the Minister. With this in mind officers have sent the draft bylaw to the Department of Conservation for comment and hopefully prior approval. The draft bylaw and supporting documentation was sent electronically to the Department on Tuesday 15 January. At the time of writing this report prior approval had not been obtained there being ongoing discussions on a number of concepts and issues. Officers are hopeful that prior approval will be granted prior to this report going to Council. Officers will include an update of this aspect of the bylaw work in the report to go forward to full Council.

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

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

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

61. The LTCCP's strong communities strategic directions section prioritises: providing accessible and welcoming public buildings, spaces and facilities; providing parks, public buildings, and other facilities that are accessible, safe, welcoming and enjoyable to use; working with partners to reduce crime, help people avoid injury and feel safer; providing and supporting a range of arts, festivals and events; and protecting and promoting the heritage character and history of the city.<sup>12</sup>
62. The LTCCP's healthy environment strategic directions section prioritises: providing a variety of safe, accessible and welcoming local parks, open spaces and waterways; providing street landscapes and open spaces that enhance the character of the city; and protecting and enhancing significant areas of open spaces within the metropolitan area.<sup>13</sup>
63. The LTCCP's liveable city strategic directions section prioritises: improving the way in which public and private spaces work together.<sup>14</sup>

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

64. The bylaw would be consistent with the commitment in the Community Plan, volume 1, page 145: *Legislative requirements are enforced to ensure the safety and health of people.*

**ALIGNMENT WITH STRATEGIES**

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

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<sup>12</sup> Our Community Plan 2006-2016, Volume 1, p.60

<sup>13</sup> Our Community Plan 2006-2016, Volume 1, p.61

<sup>14</sup> Our Community Plan 2006-2016, Volume 1, p.64

66. The *Safer Christchurch Strategy* aims to see rates of injury and crime decline, for people to feel safe at all times in Christchurch City, and for Christchurch to have excellent safety networks, support people and services.<sup>15</sup> One of the ways of measuring the success of the Strategy is that “pedestrians, cyclists, motorists and people with disabilities can move safely around our city”.<sup>16</sup>
67. The *Pedestrian Strategy for Christchurch, February 2001*, states: “The Christchurch City Council is committed to the support of pedestrians and the encouragement of walking as a method of travel and for social recreation... Council will work to create a City in which: the pedestrian environment is friendly, safe and accessible; more people walk, more often; all pedestrians are able to move about freely and with confidence”.<sup>17</sup> Additionally especially in recent subdivisions many parks and reserves are positioned in the subdivision to enable pedestrians to walk between subdivisions without the need to keep to the streets. Additionally, Council recently signed the International Charter for Walking, which supports the “universal rights of people to be able to walk safely and to enjoy high quality public spaces, anywhere and at any time.”<sup>18</sup>
68. The *Christchurch Cycling Strategy* states: “The City has a long-term approach to making cycling safe, enjoyable and [to] increase the number of people who cycle (for transport and recreation). The Cycling strategy is a confirmation by Council of its full commitment to cycling and aim to more actively promote cycling as part of Christchurch’s sustainable transport mix”.<sup>19</sup>
69. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which “Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau”.<sup>20</sup> Goal 4.6 states that the Council will endeavour to “ensure all Council services, facilities, amenities and places or recreation (for example parks and beaches, galleries, libraries and cultural venues) maximise the opportunities for people with disabilities to attend and participate.”<sup>21</sup>
70. The *Grazing Management Strategy of Reserves on the Port Hills*, was developed to assist the Council with the maintenance of the large tracts of Council reserves on the Port Hills. This is to ensure that the vegetation on the reserves does not become an acute fire hazard in the summer. And that the native silver tussock vegetation is maintained without too much competition. Council adopted the strategy in 2002
71. The *Physical Recreation and Sport Strategy*, was developed by the Council as part of its leadership role to bring together the perspectives of many different organisations involved in physical recreation and sport into one comprehensive strategy thereby providing support and direction for these organisations. Council adopted the strategy in 2002.
72. The *Port Hills Recreation Strategy*, was adopted by Council in 2004, its purpose being to analyse present recreation activities occurring on the Port Hills, identify gaps in the provision of recreational experiences, and thereby identify opportunities for future activities which could be provided in a coordinated integrated way.
73. These seven strategies touch on aspects of what a proposed parks and reserves bylaw would be developed to manage – that is, a balance between the different activities the community may wish to use parks and reserves for. The proposed bylaw would provide for reasonable controls to protect health and safety, to protect the public from nuisance, from lawful activities.
74. There are a number of policies that are relevant to parks and reserves as follows:
  - Adopt a Park/Cemetery Scheme (adopted 10 August 1993)
  - Coast Care Program
  - Victoria Square and Victoria Square Amphitheatre - Use Of (26 November 1990)
75. The proposed bylaw would be complemented by operational policies (such as those above), which would align with the relevant strategies for managing public spaces. These policies will need to be reviewed and updated to ensure they align with the new bylaw, and that they are still necessary, that they are appropriate and that they meet the purpose they were designed for.

<sup>15</sup> <http://www.ccc.govt.nz/Publications/SaferChristchurchStrategy/>

<sup>16</sup> Safer Christchurch Strategy, <http://www.ccc.govt.nz/publications/SaferChristchurchStrategy/>

<sup>17</sup> <http://www.ccc.govt.nz/Publications/PedestrianStrategy>

<sup>18</sup> Signed 3 October 2007 by the then Mayor, Garry Moore – The International Charter for Walking - Walk 21 – Taking walking forward in the 21<sup>st</sup> Century

<sup>19</sup> <http://www.ccc.govt.nz/cycling/future/>

<sup>20</sup> Equity and Access for People with Disabilities Policy, [www.ccc.govt.nz/policy/equityaccessdisabilities.asp](http://www.ccc.govt.nz/policy/equityaccessdisabilities.asp)

<sup>21</sup> Equity and Access for People with Disabilities Policy, [www.ccc.govt.nz/policy/equityaccessdisabilities.asp](http://www.ccc.govt.nz/policy/equityaccessdisabilities.asp)

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

76. Yes, as above

**CONSULTATION FULFILMENT**

77. Initial discussions have taken place with the Ngai Tahu runanga Mahaanui Kurataiao (MKT).
78. If the draft bylaw is adopted by the Council, stakeholder groups will be given the opportunity to make a submission as part of the Special Consultative Procedure. They can also be heard before the hearings panel, if they so wish. Stakeholder groups include, but are not limited to, sporting associations and clubs, event management companies/festival organisers, disability associations, the Chamber of Commerce, and all residents' groups. The Ngai Tahu runanga will have a further opportunity to express their views on the proposed bylaw through this Special Consultative Procedure process.

**STAFF RECOMMENDATION**

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

- (a) that under section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the potential problems relating to parks and reserves identified in this report,
- (b) that a bylaw should be made under the Local Government Act 2002 under the following powers:
- s.145(a) - to protect the public from nuisance
  - s.145(b) - to protect, promote, and maintain public health and safety
  - s.146(b)(vi) - to control the use of the land, structures, or infrastructure under the Council's control.
- (c) that the purpose of the draft bylaw is to provide for the orderly management and control of parks and reserves vested in or under the control of the Council for the benefit and enjoyment of all users of those parks and reserves.
- (d) that the attached draft bylaw be adopted for consultation.
- (e) that public notice of the consultation be given in *The Press* and on the Council's website on 12 April 2008, and that public notice of the proposal be given in the *Christchurch Star*, the *Akaroa Mail* and other community newspapers distributed in the Christchurch area, as close as possible to 12 April 2008.
- (f) that the attached Statement of Proposal and Summary of Information be adopted, and that they be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website.
- (g) that the period within which written submissions may be made to the Council be between 12 April 2008 and 14 May 2008.

## BACKGROUND (THE ISSUES)

79. The bylaws currently comprise a collection of relatively diverse matters that may occur in parks and reserves, including: the use of parks and reserves; nuisance in parks and reserves, damage to parks and reserves; and miscellaneous provisions.
80. It is timely to review these bylaws because:
- the Local Government Act 2002 requires them to be reviewed
  - the amalgamation of Banks Peninsula District Council with the Christchurch City Council, and the earlier amalgamation of Christchurch City, Riccarton Borough, Heathcote County, Waimairi County, Paparoa County Councils means that legislation made under the six jurisdictions is gradually being amalgamated.
81. Some of the clauses contained in the existing parks and reserves bylaws:
- reflect matters that were significant in the past, but are no longer relevant
  - are now covered by national legislation, by city and district plans, or by other bylaws
  - may not comply with the Code of Good Regulatory Practice
  - may not comply with the New Zealand Bill of Rights Act 1990
  - may not fall within current bylaw making powers of the Local Government Act
  - may no longer present a significant issue that needs to be controlled via bylaw
  - may not be possible or practical to enforce.
82. In general, it is accepted that Council control of parks and reserves via a bylaw should not:
- apply to matters that are covered adequately by other legislation
  - deal with matters that unnecessarily restrict individual freedoms<sup>22</sup>
  - cover matters that are insignificant in effect or magnitude
  - deal with matters that can be more appropriately dealt with by other tools at the Council's disposal
  - be impractical to enforce.<sup>23</sup>
83. A clause by clause analysis of possible new clauses derived from the existing bylaws to be included in the new bylaws is attached, indicating which of the possible clauses in the derived from the 7 bylaws meet the above test for inclusion in a new parks and reserves bylaw.
84. The Council has at its disposal a number of different tools for managing or preventing potential or perceived issues, including through other Acts of Parliament (Reserves Act), City or District Plans, through policies and strategies, through public education, through partnerships with other agencies, imposing conditions as the owner which includes having a management and control responsibility for some Crown owned reserves (e.g. through contracts), and through bylaws.
85. Bylaws are an effective tool for regulating some matters (such as vehicle traffic within reserves), but are an ineffective tool for regulating other matters (such as behaviour). The powers contained within the Local Government Act to enforce bylaws are limited, and in the case of the Parks and Reserves bylaw, the only tool available to enforce a breach of a bylaw offence is prosecution. Prosecution is not usually a viable option for behaviour-related matters, where often the offence is committed with little physical evidence or with little likelihood of establishing the identity of the offender (eg graffiti). An additional complication is that often those who are likely to breach behavioural bylaws are considered youths under the law,<sup>24</sup> and the cost of taking a prosecution is often disproportionate to the offence (e.g. throwing a stick or stone). The Local Government Act requires the Council to determine whether a bylaw is an appropriate tool for addressing each issue. In the case of behavioural clauses, the clause by clause analysis demonstrates that it is not an appropriate or effective tool. Behavioural matters are covered in the Summary Offences and Crimes Act, which is enforced by the Police. Police ultimately retain the power of arrest for uncooperative offenders and, unlike Council staff, maintain a 24 hour response capability for these types of activities. The Council is also able to take a private prosecution under these Acts.

<sup>22</sup> The New Zealand Bill of Rights Act must be taken into account in the making of bylaws - bylaws cannot be made that are inconsistent with the NZBORA (Local Government Act 2002, section 155(3))

<sup>23</sup> The Decision Making Guide (produced by CCC and Local Government New Zealand) requires taking into account the nature of the identified problems; whether they need to be controlled by regulatory means or can be dealt with by other means; whether the perceived problems are significant, either by frequency or seriousness; and whether regulatory action is available under other legislation, or is reasonably able to be enforced.

<sup>24</sup> Under the Children, Young People and their Families Act 1989, young people are those over 14 years of age, but under 17 years. The Youth Justice section in the Act has specific responsibilities for officers charging a youth with an offence (section 215). Such charges would be brought before a Youth Court (section 272), and a Youth justice Coordinator is required (section 245).

86. Council staff have indicated at a previous seminar that a bylaw was needed to prevent some activities in parks and reserves, to maintain public health and safety, and to regulate some activities which occur on parks and reserves. The aim of the bylaw would be to manage parks and reserves in such a way as to balance the various different, and sometimes competing, legal uses for which parks and reserves may be used.
87. Bylaw content has been discussed in detail in the section 155 analysis earlier in the report.

#### **Nuisance/behavioural clauses**

88. Any proposal to incorporate behavioural nuisance clauses (such as those addressing vandalism, behave in a way which is offensive, obstructive or of annoyance to other users, littering, etc) into the bylaw does not meet the test in the Local Government Act, which requires local authorities to determine whether a bylaw is the *most appropriate* way of addressing perceived problems (section 155(1) of the Act). By not including these matters in the bylaw, the Council would not be saying that these are things are not problems, just that the bylaw is not the *most appropriate* way to address them.
89. A bylaw is not an appropriate (or effective) way of addressing the problem of nuisance behaviour as:
- the only option for enforcing the bylaw is to take a prosecution in the District Court (or the Youth Court, if the offender is a youth 14-17 yrs)
  - there is no power under the Local Government Act to issue infringement notices (instant fines)<sup>25</sup> or to use other, less formal, legal tools than prosecution
  - having these clauses in the bylaw duplicates what is in the Summary Offences and Crimes Acts, which are primarily enforced by the Police although the Council is able to take a private prosecution if it so wishes.
  - the parks and reserves bylaw is intended to regulate otherwise lawful activity, the behavioural matters are already unlawful (under the Summary Offences Act, Crimes Act, Wild Life Act, Animal Welfare Act, Reserves Act, or the Litter Act)
  - many of these issues (such as vandalism) are more appropriately handled by the Police, who have specialised training and other tools at their disposal, have the power to arrest, and have a 24 hour response capability
  - it can be difficult to establish the identity of the offender, and Council Enforcement Officers are empowered to ask for a person's name and address, but if the person refuses or gives fake or incorrect details, an Enforcement Officer can take no further action
  - Council staff have no ability to take action to stop the offender from committing the offence, as they have no powers of arrest, and physically intervening could be considered assault or put Council staff in danger
  - often by the time a complaint has been received, the offender has moved on, so the identity of the offender cannot be established
  - the minor nature of the offences is disproportionate to the cost of taking a prosecution and is therefore arguably not in the public interest.
90. Behavioural nuisance clauses have been in parks and reserves bylaws in Christchurch for approximately 27 years during which the Council has not taken any related prosecutions. There is no record of any prosecutions being taken by the Banks Peninsula District Council. As the only enforcement tool available under the Local Government Act is prosecution, and because these types of clauses are of a minor nature, they are not easily enforceable.
91. The Police are empowered to address the behavioural issues (above) and can do so more effectively, with better resources, training and enforcement tools, than the small Council enforcement team. The Council is working with the Police to help address some of these issues, for example, through the Graffiti Hotline, through Safer Christchurch, and through the Central City Revitalisation project.

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<sup>25</sup> Infringement notices (instant fines) cannot be issued under the Local Government Act (under which a Public Places Bylaw would be made). Some bylaws allow infringement fines - it depends on the primary act under which the bylaw was made – eg some of our bylaws are made under the Dog Control Act, the Transport Act, etc, which all allow infringement notices to be issued in relation to the enforcement of bylaws.

92. There is no dispute that these types of behaviours are problematic; the question is whether a bylaw is an effective tool to deal with the problem. In this case, a bylaw is not an effective tool for addressing nuisance behaviours, for the above reasons. The purpose of the bylaw is to regulate "lawful" matters. These sorts of behavioural matters are already offences under other law, such as the Summary Offences Act.
93. If behavioural clauses are included within the bylaw to send a message about the appropriateness of behaviour, this may raise public expectations that the Council will enforce the bylaw, unintentionally setting the Council up for failure. Incorporating unenforceable clauses into the bylaw may tie up staff and Councillor time responding to complaints about why the Council is not enforcing its bylaws.

#### THE OBJECTIVES

94. The objective of the bylaw is to provide for reasonable controls for the protection of health and safety, and the avoidance of nuisance in Parks and Reserves, to the extent that the controls fulfil the provisions of the Local Government 2002 and appropriate community outcomes. The purpose of the draft bylaw will be to manage parks and reserves in such a way as to balance the various different, and sometimes competing, lawful uses for which parks and reserves may be used.
95. This report outlines the options for a new parks and reserves bylaw, includes a draft new parks and reserves bylaw, and recommends that Council adopt the draft bylaw and agrees that consultation should be undertaken to seek community views on the draft.<sup>26</sup>

#### THE OPTIONS

96. The options are:
- Option one: Status quo, retain the seven bylaws
  - Option two: Revoke the seven bylaws and create a consolidated bylaw
  - Option three: Revoke the seven bylaws and create a consolidated, rationalised and modernised public places bylaw.
97. Option one, status quo, is not considered acceptable, as six of the seven bylaws under consideration must be reviewed by 30 June 2008 under the requirements of section 158 of the Local Government Act 2002. Additionally, due to the amalgamation of the CCC and BPDC, it is sensible to combine this process with a review of the seventh bylaw, the BPDC parks and reserve bylaw, in order to introduce a single bylaw covering parks and reserves across the whole jurisdiction.
98. Option two, revoking the seven bylaws and creating a consolidated bylaw would meet the review requirements of section 158 of the Local Government Act and address the amalgamation issues, but is not the preferred option, as consolidating the bylaws, but not rationalising and updating them could lead to a bylaw that may need further updating within a short time frame (which would have to undergo the full Special Consultative Procedure). In addition, this option is not likely to meet the tests of section 155 in the Local Government Act.<sup>27</sup> Part of the purpose of the Local Government Act requirement to review bylaws, is to ensure that they are relevant and appropriate in the current context. As the attached clause by clause analysis shows, some of the possible clauses:
- reflect matters that were significant in the past, but are no longer relevant
  - are now covered by national legislation, by city and district plans, or by other bylaws
  - may not comply with the Code of Good Regulatory Practice
  - may not comply with the New Zealand Bill of Rights Act 1990
  - may not fall within current bylaw making powers
  - may no longer present a significant issue that needs to be controlled via bylaw
  - may not be cost-effective or possible to enforce.

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<sup>26</sup> The process for consulting the community is outlined in s.83 of the Local Government Act 2002 – the Special Consultative Procedure.

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

99. Option three, revoking the seven bylaws and creating a consolidated, rationalised and modernised parks and reserves bylaw, is the preferred option. This would meet the review requirements of section 158 of the Local Government Act, address the amalgamation issues and meet the tests, at a broad level, in section 155 of the Local Government Act.<sup>28</sup> The key differences between this option and option two are the rationalisation of the new bylaw, and its modernisation. Rationalising the bylaw would clarify and reduce the clauses, for example, by removing duplication and matters that are insignificant or are no longer relevant, and matters that cannot be enforced. Modernising the bylaw would update the language and style of the bylaw, so that it is easier to understand, and is more suitable now and into the future.

#### THE PREFERRED OPTION

100. Option three, revoking the existing seven bylaws and creating a consolidated, rationalised and modernised parks and reserves bylaw is preferable.
101. Rationalisation of the bylaw would remove some clauses that are already covered by national legislation, by city and district plans, or by other bylaws, and ensure that the bylaw no longer contains matters that are insignificant or no longer relevant in the current context, or that cannot be practically enforced.
102. This type of bylaw is written in simple, modern language. The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: “there is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people...”.<sup>29</sup> Additionally, the Ministry of Economic Development’s *Code of Good Regulatory Practice*, promotes the importance of clarity, arguing that regulation should use plain language where possible, in order to make things as simple as possible.<sup>30</sup>

#### ASSESSMENT OF OPTIONS

##### The Preferred Option

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

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>• Only matters of significance will be regulated</li> <li>• Only matters that are enforceable will be regulated</li> <li>• An easier to understand bylaw (modern plain English)</li> <li>• Flexibility to cover future applications (all activities covered, rather than specific activities)</li> <li>• Public expectations more likely to be met (realistic and enforceable clauses)</li> </ul>	<ul style="list-style-type: none"> <li>• Initial need to review and add to existing policies and keep them updated</li> <li>• People have to check with the Council before undertaking an organised activity – all activities covered, rather than specific activities being listed</li> <li>• Increased need for advertising/communications</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>	<ul style="list-style-type: none"> <li>• None specific</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>• Only matters of significance will be regulated</li> <li>• Requirements more easily understood</li> </ul>	<ul style="list-style-type: none"> <li>• Some Council staff time – eg in preparation of advisory documents (may be similar to the current situation)</li> </ul>

<sup>28</sup> As above.

<sup>29</sup> The Legislation Advisory Committee was established in 1986 to “help improve the quality of law-making by attempting to ensure legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation” [www.justice.govt.nz/lac/who/index.html](http://www.justice.govt.nz/lac/who/index.html)

<sup>30</sup> Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

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

The community outcomes that this option would contribute to include:

- a **well governed city** by having single, new, consolidated, rationalised and modernised parks and reserves bylaw, the requirements will be easier to understand than they are now. Increased understanding of the bylaw, both while it is being consulted on, and once it comes into force. Public expectations will be able to be met in relation to enforcement.

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

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

**Effects on Maori:**

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

**Consistency with existing Council policies:**

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

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

Such policies, agreements or contracts would be complementary to the bylaw, and can be updated to respond to changing community needs, whereas if a greater level of detail was contained within the bylaw, the bylaw itself would have to be updated, which must involve the Special Consultative Procedure.

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

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

Further views would be obtained through the Special Consultative Procedure.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

**Other relevant matters:**

Section 158 of the Local Government Act 2002 requires the Council to review six of the bylaws under consideration by 30 June 2008.

The amalgamation of the Banks Peninsula District Council and the Christchurch City Council requires an amalgamation of the bylaws which cover the whole region under CCC jurisdiction.



**Maintain the Status Quo (if not preferred option)**

104. The status quo is not preferred as it would involve failing to comply with section 158 of the Local Government Act, which requires bylaws made under the Local Government Act 1974 to be reviewed by 30 June 2008. In addition, retaining the seven separate bylaws, would fail to acknowledge or respond to the amalgamation of the BPDC with the CCC or the earlier amalgamation in 1989. A single bylaw is required to cover the whole district for which the Christchurch City Council has responsibility.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>Existing bylaws may be known to some people - no new requirements to publicise</li> </ul>	<ul style="list-style-type: none"> <li>Legal uncertainty as to the status and enforceability of the bylaws</li> <li>Reputation of the Council tarnished by not meeting LGA requirements</li> <li>Reputation of the Council tarnished by failing to update bylaws as a result of the BPDC/CCC amalgamation in a timely fashion</li> <li>Un-necessary duplication of parts of the existing bylaws, with other more appropriate bylaws and other more recent legislation for example Resource Management Act 1991, meaning sections of the existing bylaws will never be used</li> <li>Uncertainty and confusion about which of the seven bylaws apply in a particular area, unworkable</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>None specific</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>None specific</li> </ul>	<ul style="list-style-type: none"> <li>None specific</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>Existing bylaws may be known to some members of the public</li> </ul>	<ul style="list-style-type: none"> <li>Legal uncertainty as to the status and enforceability of the bylaws</li> <li>Open to legal challenge</li> </ul>
<p><b>Extent to which community outcomes are achieved:</b></p> <p>The community outcome of a <b>well governed city</b> would not be met, as the maintaining the current situation would be confusing and uncertain, and would not comply with the Local Government Act.</p> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>Section 158 of the Local Government Act 2002 requires the Council to review six of the bylaws under consideration by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create an uncertain legal environment, in which the legal status and enforceability of the bylaws would be questionable.</p> <p><b>Effects on Maori:</b></p> <p>There will be no specific effect on Maori – maintaining the status quo would have a negative effect on the city as a whole.</p> <p><b>Consistency with existing Council policies:</b></p> <p>No.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>The Legal Services Unit does not support maintaining the status quo, nor does the Transport and Greenspace Unit.</p> <p><b>Other relevant matters:</b></p>		

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

105. The third option is to revoke the seven bylaws and create a single, new, consolidated bylaw. This new bylaw would largely replicate the existing seven bylaws, with some rationalisation where duplication exists. The clauses and language from the existing seven bylaws would largely be carried over to the new bylaw.
106. This is not the preferred option as some of the language in the seven bylaws does not follow the movement in New Zealand towards plain English legal drafting.<sup>31</sup> A further issue is that there is a need to rationalise the seven bylaws, as aspects of them:
- may not fall within current bylaw making powers of the Local Government Act 2002
  - are now covered by other legislation/bylaws or by city and district plans
  - no longer present a significant issue that needs to be controlled via bylaw
  - may no longer be cost-effective or possible to enforce.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	<ul style="list-style-type: none"> <li>• not much change – easy to understand</li> </ul>	<ul style="list-style-type: none"> <li>• aspects of the current bylaws are better enforced by other bylaws or legislation (e.g. City Plan, Resource Management Act 1991)</li> <li>• public expectations unlikely to be met (unrealistic clauses)</li> <li>• duplication in other laws (including city/district plans) is unnecessary and could be confusing</li> <li>• the need for updating or altering may be more likely in the short term</li> <li>• outmoded language may make the new bylaw harder to understand, now and into the future</li> <li>• some coverage of the bylaw is prescriptive, providing less flexibility</li> <li>• lack of flexibility may increase the need to update or alter the bylaw</li> <li>• if it requires updating or altering, it will have to go through the full Special Consultative Procedure</li> </ul>
<b>Cultural</b>	<ul style="list-style-type: none"> <li>• none specific</li> </ul>	<ul style="list-style-type: none"> <li>• none specific</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>• none specific</li> </ul>	<ul style="list-style-type: none"> <li>• none specific</li> </ul>
<b>Economic</b>	<ul style="list-style-type: none"> <li>• not much change – easy to understand</li> </ul>	<ul style="list-style-type: none"> <li>• (as above for social)</li> </ul>

<sup>31</sup> The Legislation Advisory Committee, in its publication *Guidelines on Process and Content of Legislation* states: “There is a strong movement in New Zealand towards plain English drafting of legislation... [where] provisions are expressed as economically as possible and in modern language. One of the objectives is to make legislation more accessible to ordinary people...” (2001)

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

This option would not contribute to a **well governed city**, as the language and coverage of the bylaw may be outmoded (and therefore hard to understand) and the bylaw will be less flexible than the preferred option, making it less useful and more expensive, as it may require frequent updating. A further issue is that aspects of the existing bylaws are unenforceable (therefore failing to meet public expectations), and carrying them over to the new bylaw is not good practice.

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

The bylaw may require frequent updating due its lack of flexibility. Inspection and enforcement activity for a new bylaw is likely be similar to that required under current bylaws.

**Effects on Maori:**

There will be no specific effect on Maori.

**Consistency with existing Council policies:**

No

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

The Transport and Greenspace Unit does not support this option.

Both the MED's *Guide to Good Regulatory Practice*, and the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* promote the importance of clarity through plain English legal drafting, in order to increase the public's understanding of their legal obligations.

**Other relevant matters:**

Section 158 of the Local Government Act 2002 requires the Council to review six of the bylaws under consideration by 30 June 2008.