

REGULATORY AND PLANNING COMMITTEE AGENDA

THURSDAY 6 AUGUST 2009

AT 9AM

IN THE NO 3 COMMITTEE ROOM, CIVIC OFFICES

Committee: Councillor Sue Wells (Chairperson),
Councillors Helen Broughton, Sally Buck, Ngaire Button, Yani Johanson, Claudia Reid,
Bob Shearing, Mike Wall, and Chrissie Williams.

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6. 8. 2009

1. APOLOGIES

2. DEPUTATIONS BY APPOINTMENT

- Donna Alfrey - Heritage Now Avon Loop HPG.
- Prestons Road Private Plan Change applicant.
(Names to be advised.)

3. PRESTONS ROAD PROPOSED PLAN CHANGE 30 – PRIVATE PLAN CHANGE REQUEST FOR THE REZONING OF RURAL LAND BETWEEN LOWER STYX ROAD AND MAIREHAU ROAD, NORTH-EAST CHRISTCHURCH, TO LIVING G.

General Manager responsible:	General Manager Strategy and Planning, DDI: 941-8281
Officer responsible:	Principal Professional Advisor Strategic Support Unit
Author:	Peter Eman, Principal Advisor Planning, District Planning Team

PURPOSE OF REPORT

1. The purpose of this report is to provide a recommendation on how to deal with the Prestons Road plan change request, including whether it should proceed to public notification, under the Resource Management Act (RMA). The request involves the rezoning of approximately 205 hectares of land between Lower Styx Road and Mairehau Road, to the east of Marshlands Road, from Rural to Living G (Prestons), including provision for commercial activities and a school. (Refer to **Attachment 1** for the plan change locality and **Attachment 2** for the proposed layout of land uses.)

EXECUTIVE SUMMARY

2. The purpose of this report is to recommend which of several options under the RMA is to be used in processing the application. The merits of the plan change are not relevant at this stage of the process, except in the limited circumstance where the effects and/or inconsistencies with the objectives and policies are clearly so significant that the change can be said to be not in accord with sound resource management practice.
3. The plan change request was lodged on 8 August 2008 and a number of requests for further information were made, with the applicant indicating in its last response received on 9 June that no further information would be provided.
4. The Council has the option of:
 - (a) Accepting the application as a private application and publicly notifying it for submission and hearing at the cost of the applicant.
 - (b) Adopting the change as the Council's own change and accepting the responsibility and costs of processing it.
 - (c) Rejecting the application.
 - (d) Processing it as a resource consent application.
5. The Council is obliged to consider this request under the due process set out in the RMA.
6. There are a number of issues that suggest that the plan change should be rejected. The most significant issues relate to information that has been requested which has not been provided and where the plan change creates expectations, and implicit obligations, that the Council will accept land as reserve, or commit to funding of the construction and/or the operation and depreciation of infrastructure that it has not agreed to. This leads to the conclusion that the plan change is not in accord with sound resource management practice and has not provided the information requested, both of which are grounds for rejecting a plan change. A further concern is that the plan change is considered to be inconsistent with, and would not implement, a number of objectives and policies. This is also grounds for rejecting the plan change as it would not be in accord with sound resource management practice and would be inconsistent with Part 5 of the Act.
7. The following information is attached to the report:
 - **Attachment 1** - Prestons Plan Change Location
 - **Attachment 2** - "Density Plan" showing proposed land uses

FINANCIAL IMPLICATIONS

8. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application it is possible that the applicant would challenge this decision in the Environment Court, which would be a costly process for the Council, regardless of the outcome. Costs cannot be predicted accurately as this is likely to be a test case and the costs could be significant.
9. Should the Council accept and notify the change at the expense of the applicant there will be no direct costs to the Council as the Council's costs would be recovered. However, there would be an impost on staff time.
10. Should the Council adopt the change as its own then the Council will need to absorb all the costs. Considering the issues of concern, these could be considerable.

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

11. Yes.

LEGAL CONSIDERATIONS

12. There is a statutory process that must be followed to determine if the plan change should be accepted and publicly notified, or otherwise. The applicant has the right to appeal this decision.
13. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed, set out in the RMA. This process is very familiar to the Council and should create no particular risks or liabilities if correctly followed.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. Processing private plan change requests is a statutory Council process, and as such is consistent with the LTCCP and Activity Management Plans. The plan change request itself raises issues of relevance to the LTCCP.

ALIGNMENT WITH STRATEGIES

15. No. The proposed private Plan Change conflicts with proposed residential urban growth areas in the UDS. However, a submission has been made to Proposed Change 1 to the Regional Policy Statement requesting that the area be recognised as within the Urban Limits.

CONSULTATION FULFILMENT

16. The applicant carried out consultation with the tangata whenua through Mahaanui Kurataiao Ltd (MKT) and that consultation is ongoing. MKT have advised that there are not likely to be significant tangata whenua issues that would prevent a rezoning of the land.

STAFF RECOMMENDATION

That the Regulatory and Planning Committee **recommends** to the Council that it agree to reject the plan change pursuant to Clauses 23 and 25 of the First Schedule to the Resource Management Act 1991.

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BACKGROUND AND DISCUSSION

The plan change request

17. The request involves the rezoning of approximately 205 hectares of land between Lower Styx Road and Mairehau Road, to the east of Marshlands Road, from Rural to Living G (Prestons) zone (Refer to locality plan in **Attachment 1**). The site adjoins the existing urban area in the vicinity of Burwood for approximately one fifth of its boundary, with the remainder of the site extending north and west into rural areas, part of which adjoins the Windsor and Waitikiri Golf Courses. Rural land separates the site from Marshlands Road, except for the proposed main commercial area which extends to Marshlands Road on the southern side of Prestons Road (refer to the proposed layout of land uses in **Attachment 2**).
18. As well as some other smaller areas for commercial activities, the proposal includes a school site, a mixture of low to medium density residential development, and a linear park network that incorporates Marshlands Domain and also provides for stormwater management. The proposal provides for a minimum of 2275 households and a maximum of 2622 households in the residential areas, with provision for additional households in the commercial areas and, potentially, on the school site if the school were not to proceed.
19. The plan change is not located within one of the Greenfield Areas that urban growth is proposed to be limited to in Regional Policy Statement Proposed Change No.1 (PC1). There are submissions on PC1 seeking the inclusion of the land in the plan change site in a Greenfield area, as well as virtually all the rural land that adjoins the plan change site. The plan change does achieve some of the PC1 objectives and policies, such as providing a range of residential densities and has the potential to achieve a density for the plan change site overall of 15 households per hectare (although it allows it to be as low as 13 households per hectare).

RMA Timeframes

20. The plan change request was formally received on 8 August 2008. Further information was requested three times, in November 2008, and January and May 2009. A number of changes have been made to the proposed plan change, and additional information provided, in response to matters raised by Council staff. However, the last response from the applicant (received on 9 June) is that no further information will be provided, despite the fact that a number of the issues raised by Council staff have not been resolved. Under the RMA, the Council is required to make a decision whether to adopt, accept, or reject the application by 31 August 2009. (This reflects an extension of the 30 working day period within which the Council is required to make this decision, to the maximum permitted of 60 working days.)

Processing of Private Plan Changes

21. The processing of private plan changes is set out in Clauses 21-29 of the 1st Schedule to the RMA. In summary this provides:
 - Clause 21 - Any person may make an application for a change to an operative district plan. The City Plan is operative.
 - Clause 22 - Request to be in writing, with reasons, an assessment of potential environmental effects and assessment under section 32 of the RMA.
 - Clause 23 - Further information may be required to better understand the potential effects, possible alternatives, and the nature of consultation undertaken. Where the applicant declines to provide the further information requested the Council may reject the request (i.e. refuse to allow it to proceed to public notification) if it considers it has insufficient information.
 - Clause 24 – The Council may modify the proposal but only with the consent of the applicant.

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- Clause 25 – The Council must consider the request, and make a decision to either:
 - (i) “Accept” it and proceed to public notification
 - (ii) “Adopt” it as if it were its own proposal, and publicly notify it
 - (iii) Reject it
 - (iv) Treat it as if it were a resource consent.
- Clause 26 - Where the Council accepts the change it must publicly notify it within four months.
- Clause 27 - The applicant may appeal the decision under clause 25.
- Clause 28 - Applications may be withdrawn.
- Clause 29 - Unless rejected, the application is put through the standard process of public notification, submission, hearing, decision, and appeal (if any).

THE OPTIONS

1. Accept the Plan Change

22. Under this scenario the private plan change is publicly notified in the form prepared by the applicant. The Council processes the plan change proposal in much the same way as a resource consent application. Accepting the plan change proposal means:
- (i) The applicant determines the nature of the plan change that is notified, and if changes to the proposal are considered necessary the Council may need to make a submission in opposition to the plan change.
 - (ii) The Council takes a neutral position on the proposal, neither supporting or opposing the proposal.
 - (iii) The applicant will bear the cost of the complete plan change process (including costs associated with the resolution of appeals).
23. There may be reasons why the Council may wish to make submissions in opposition to the plan change, particularly in respect of the issues identified later in this report. It is noted that if a submission is not received seeking an amendment to the plan change, the plan change cannot be amended in that respect in the decision following the hearing of submissions.

2. Adopt the Plan Change

24. Under this scenario the plan change becomes a Council plan change. It is notified, heard and decided the same way as a plan change prepared by the Council. The Council bears all of the associated costs. Adopting the plan change proposal would mean:
- (i) The Council can control the proposal that is publicly notified.
 - (ii) It implies that the Council's initial assessment is that the plan change is appropriate.
 - (iii) The Council bears the costs of managing and processing the plan change.
25. In regard to this last point, there is the potential that more officer time and Council financial resources are spent in the plan change adoption process than in the accepted process. These would be resources that are diverted from the investigation and plan change matters that the Council has directed are a priority for the District Plan team. While processing privately requested plan changes are mandatory, this particular rezoning is not one of the Council directed priorities. If the Council were concerned about significant aspects of the proposal, this would not be an appropriate course of action.

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3. Reject the Plan Change

26. There are very limited grounds in the Act for rejecting an application. In addition to the grounds under clause 23 that the applicant has declined to provide the further information requested, a plan change can be rejected if:
 - It is frivolous or vexatious
 - The substance of the change has been dealt with by the Council or the Environment Court in the last two years
 - The change is not in accordance with sound resource management practice
 - The change would make the District Plan inconsistent with Part 5 of the Act (other policies or plans, such as Regional Policies or Plans), or
 - The District Plan has not been operative for more than two years.
27. The privately requested plan change cannot be said to be frivolous or vexatious. The plan change has the potential to generate positive outcomes, as well as negative outcomes. The substance of the change has not been dealt with in the last two years and the City Plan has been operative for more than two years, so neither of those grounds are applicable.
28. As explained below, the principal issues of concern with this plan change request relate to the information the applicant has declined to provide and whether the change is not in accordance with sound resource management practice.
29. There could potentially be issues relating to whether the plan change would make the District Plan inconsistent with Part 5 of the Act, in that the change is inconsistent with PC1 (discussed more fully below). However, the submissions and further submissions on PC1 are still only currently being heard by the Regional Council. It is considered that the PC1 process is not sufficiently advanced for the requested plan change to be rejected solely because of the inconsistencies with PC1. However, it is a consideration, and would be particularly so should the Council consider adopting the plan change.

4. Treat the Plan Change as a Resource Consent

30. Under this scenario the Plan Change is converted to a resource consent application and is processed by the Council as such. The applicant bears all of the associated costs. In this case the application relates to the amendment of the planning maps and the imposition of a set of rules which the applicant envisages will allow some flexibility in the management and development of the site, should it be rezoned. Given the variable nature of the potential developments sought to be permitted by the application, it is considered that it would be difficult to deal with it as a resource consent application.

ISSUES

31. What the Act requires, in essence, is that the applicant provide a section 32 assessment of the potential effects that may result from the plan change, particularly, in this case, what the proposed rules permit. The assessment needs to reflect the degree to which the proposed rules limit or do not limit the potential effects. The "worst case", but realistic, outcomes that the rules would permit in respect of any particular effect, such as traffic effects, need to be included in the assessment. It also needs to assess how consistent those outcomes are with the relevant objectives and policies.
32. Most of the issues in this case relate to two of the considerations that the Council is required to make at this stage. The first consideration regards issues relating to the lack of assessments of some of the relevant potential effects, including where assessment have not considered relevant factors. It is the issue of whether the assessment considers all the relevant factors that have led to considerable debate. This is a different issue from whether there is agreement on the conclusions reached in the assessment, i.e. the merits. The Act clearly indicates that the lack of requested assessments is grounds in itself for the Council to reject the notification of the plan change.

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33. The second consideration regards issues that relate to whether the plan change is not in accordance with sound resource management practice. There is little case law on when this could apply, but this could apply where the plan change contains fundamental flaws or deficiencies such that it is not worthy of further consideration and testing through notification, public submission, and hearings. This may include where the request is clearly contrary to objectives and policies (that the plan change itself does not propose to amend), whether in the City Plan or higher level planning documents such as the RPS. This would be inconsistent with the Part 5 requirements of the Act that rules be consistent with objectives and policies, and that district plans be consistent with higher level documents, which is another of the grounds for rejecting a request. The plan change may also not be in accordance with sound resource management practice if the adverse effects of the change are so significant that it can be concluded that such effects should not be permitted in a district plan. Many of these reasons for rejecting the notification of a plan change require a consideration of the merits of the plan change. It should only be considered with some caution as the Act clearly intends that private plan changes should be able to be requested and invariably plan changes will have some negative and some positive effects. So the fact that the Council may have some concerns about the merits of a plan change should not necessarily mean that it would be appropriate to reject a plan change.
34. It is also noted that the Council has the option of raising issues by itself lodging a submission on the plan change. This may be a useful way of dealing with issues that could be made acceptable through amending the proposed Plan provisions of the plan change, and are not issues that question whether the plan change should proceed at all in any form. It is important to note that the concern about the Council not being able to hear the plan change if it makes a submission seems unlikely to be an issue in this case, as a commissioner may need to be used in any event due to the Council's support of UDS and PC1 to the RPS.
35. The following are the more major issues that have been identified in this plan change. There are many minor matters of detail that need to be resolved including some rules that lack clarity and provisions that require matching reasons for rules and assessment matters. Staff are continuing to work through these matters with the applicant. However, they have generally not been raised in this report where the intended outcomes are relatively clear, or when they are matters that would be unlikely to lead the Council to reject the notification of the plan change. They may, however, be matters that the Council may ultimately wish to make a submission on.

Wastewater

36. The Council requested that the applicant provide an assessment of whether the development of this site would result in the efficient provision and use of infrastructure, particularly in respect of waste water. The Council also requested that the applicant indicate how it intends to ensure the developer will pay for the cost of the infrastructure, as the infrastructure is not included in the LTCCP, or alternatively provide an assessment of the implications if that did not occur. The assessment sought by the Council was in respect of the construction, operational and depreciation costs of the wastewater infrastructure. There are a number of objectives and policies in the City Plan, the RPS, and PC1 that seek these outcomes. They have consistent themes of integrated financial and infrastructure planning, the efficient provision of infrastructure, and consideration of growth and servicing costs. They also reflect the requirements of the Act for the integrated management of resources.
37. The Council was concerned that developing the plan change site was not efficient compared to other options. Further, that the Council has planned for urban growth initially in two sectors of the City, whereas this proposal would introduce a new growth area requiring a third set of infrastructure. That would mean having to bear the costs of three infrastructure systems instead of just two, over a longer period, without any increase in population or development contributions under the Local Government Act to finance them. Even if the population growth increased as a result of the plan change, the development contributions are unlikely to cover the costs, because they were not set to take into account the cost of servicing of this site.

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38. The applicant's response has been to accept that the development contributions should not be the sole source of funding the infrastructure required beyond the plan change site itself and to include the statement that "a specific requirement of the Plan Change approval" should be that there is no net cost to existing ratepayers. However, despite the Council requesting that the applicant indicate how it intends to ensure that this will happen, nothing has been proposed by the applicant to achieve it. If the plan change proceeds without a mechanism in place that clearly requires the applicant to pay the costs of the infrastructure, the implication will be that the Council will be prepared to provide the infrastructure. This is contrary to the relevant policies. The applicant also has not provided an assessment, as an alternative, of the implications if the developer was not committed to paying the full costs.
39. The Council's wastewater engineer advised that the plan change site is particularly expensive to service compared to the two growth areas in the south-west and north-west, particularly because the growth in those areas is able to piggy-back on the infrastructure upgrades that are required in any event for the existing urban area. Further, that the Council will incur significant operational and depreciation costs for the Prestons wastewater infrastructure. There has been, and still is, considerable debate between the applicant and Council staff over the relevant factors that should be taken into account and the impacts of those factors in determining the relative efficiency of providing infrastructure for the site and the operational and depreciation costs. However, the effect of the plan change will be that the Council will have to accept those costs irrespective of how significant they might prove. Further, the view of the Council's wastewater engineer is clearly that the proposal is not an efficient development of infrastructure. This suggests that the proposal is also contrary to the relevant policies relating to the development of infrastructure.
40. The Council could potentially seek to deal with the issue of ensuring the applicant pays for the cost of constructing the infrastructure, by making a submission on the plan change itself. It would be more difficult, if it is at all possible, to deal with the ongoing operational and depreciation costs through a submission on the plan change.
41. Legal advice on this issue confirms the concerns expressed above, and that there are reasonable grounds on which to conclude that the plan change should be rejected. In addition to the fact that the applicant has declined to provide the information requested on how it proposes to ensure that developer will pay the full costs of the infrastructure, the advice is that these issues raise concerns that the plan change is not in accord with sound resource management practice and are contrary to Part 5 of the Act in terms of the proposed rules not implementing the policies of the City Plan. There is little direct case law that assists in determining these particular issues and a degree of caution should apply when considering rejecting a plan change if the issues relate solely to the consistency with objectives and policies. However, in this case where the plan change imposes costs on the Council that it has not provided for in the LTCCP, has not agreed to, and a significant portion of which the applicant has acknowledged it should bear (in terms of construction costs) also leads to the conclusion that it would not be sound resource management practice for the plan change to proceed to notification.

Transportation

42. One of the principal transport issues is that the transport assessment is based on infrastructure that does not currently exist. The applicant has taken a particular stance on this issue, which requires some detailed comments to understand the current position.
43. The initial traffic assessment provided with the plan change considered the impact of the plan change in terms of the effects that would arise if a series of road improvements, including the Northern Arterial and a number of major improvements on Council roads, are completed in accordance with the timing planned by the relevant authorities. The Northern Arterial was planned to be completed by the NZ Transport Agency in 2016 and the Council road works at various times as indicated in the 2006-2016 LTCCP. The Council's transportation engineer has concerns about the model used and a number of other matters, including that the applicant's Transport Assessment Report indicates that the plan change will result in situations where the minimum levels of service set out in the Regional Land Transport Strategy will be exceeded. These are matters of merit that may be more appropriately dealt with through a Council submission on the plan change.

3 Cont'd

44. The application did not assess the potential effects if development proceeded at a pace greater than the road infrastructure capacity planned for any particular year, nor if the works were not constructed in the years currently planned or not at all. Neither did the proposed plan change propose to set limits on the scale of permitted development based on whether some or all of the works have been completed.
45. The Council's first request for further information in November 2008 identified that there was a possibility that not all the State Highway and Council road projects would be completed by the times planned and that some form of sensitivity analysis was required from the applicant to assess the potential effects of these road works not proceeding as planned. The request stated that the plan change should identify what the consequences will be if those works do not proceed as planned and how it is proposed to avoid the resulting adverse effects. The Council transportation engineers suggested that a sensitivity test be undertaken by modelling an interim development period with 50 per cent of the development potential and without the Northern Arterial, but with all the Council road works. This was to give the Council some idea of how critical the road works were to ensure sufficient capacity for the development. The request also asked for clarification as to whether the applicant intended to commit to paying for the road works should the works not be completed by the authorities as planned, as seemed to be suggested in part of the application.
46. The applicant's response to this request was that it was not considered to be practical to assess all permutations associated with stages of development and various road upgrading projects, but the applicant agreed that it would model the interim network scenario without the Northern Arterial. The Council indicated in the subsequent request for further information (January 2009) that, if the results indicated that any of the development relied on the construction of the Northern Arterial, it would be appropriate to restrict development until there was sufficient capacity.
47. The modelling without the Northern Arterial was provided in March 2009 and concluded that in the worst case there would be sufficient capacity for at least 50 per cent of the Prestons development without the Northern Arterial. The Council's transportation engineer has been unable to make sense of the modelling provided as the reallocation of traffic without the Northern Arterial seems to have resulted in significant amounts of traffic disappearing, and so is not in a position to indicate whether the conclusions reached by the applicant are appropriate. In addition, the plan change provisions did not propose to limit development to match the road network capacity, despite the applicant's traffic experts acknowledging that with the potential timing changes of road projects it may be appropriate to either restrict development or offer a financial contribution.
48. The subsequent Council request for information (May 2009) reiterated the need for a limit on development until further capacity is provided. It also acknowledged the recent nationally significant status given to the Northern Arterial by the Government, but noted that the recently released draft 2009-2019 LTCCP proposed that many of the road works would not be fully funded over the development horizon of the plan change. This highlighted the uncertainty of the timing of the works in the LTCCP. The Council transportation engineers considered it necessary to seek an assessment of the effects if those road works did not proceed as originally planned. It was also suggested that the applicant develop a staged development programme that restricts development until certain road works that are necessary to manage the additional traffic demands of the Plan Change are completed, and that this be reflected in rules in the plan change.
49. The applicant's last response indicates that it does not consider, for various reasons discussed shortly, that it is necessary to "volunteer" any rules to limit development. Despite this the applicant has amended the proposed plan change to include a rule limiting development to 1300 residential units and 6,000 square metres of commercial development dependant on the Northern Arterial only. It does not propose any limits in respect of the Council road works and refuses to assess the potential effects that would arise if the works did not proceed as planned.

3 Cont'd

50. There are several reasons given in the latest response for the applicants stance. The applicant considers it inconsistent for the Council to be concerned about these matters when the Council and other organisations advocate a growth strategy dependant on the provision of this infrastructure through PC1 to the RPS, whilst at the same time asserting that the Prestons development is not entitled to rely upon it. This, however, ignores the differences in the two processes. PC1 does not rezone land for urban development. It identifies areas that can be suitable for rezoning from a broad sub-regional urban growth perspective based on information currently available. Prior to the urban development of any of the identified Greenfield areas, they must first go through an additional process of a plan change to assess, in detail, the suitability of the area for an urban zoning. There could be many factors that could prevent or delay the rezoning of all or part of the area. If at the time of the plan change the infrastructure that the area relied on was not in place, then the development of that area may also be delayed through rules limiting development, despite being included in PC1. PC1 specifically provides for the possibility that some of the identified Greenfield areas may not proceed at the time anticipated and allows for the alternative allocation of that growth.
51. The applicants also suggest that there need not be concerns about the Council road works because the Council will adjust future LTCCPs to match the higher priority now afforded to the Northern Arterial by the Government. However, it is understood that all the government has done to date has been to recognise the road as being of national significance and there is no indication that its timeframe has been changed in any significant way. There is also no certainty that the Council will be able to bring its road works forward considering all its other commitments.
52. Finally, the applicant has also questioned whether the Council can ask for assessment of the effects if the Council road works did not proceed, apparently on the basis that the Council did not ask for that in the initial information it required. Although the Council clearly raised concerns in respect of all the road works the plan change relies on, the only modelling it specifically required initially was that for the scenario without the Northern Arterial. It was only later when it was realised that the draft LTCCP changed the timing for many of the Council road works, that further assessment was specifically sought.
53. There is no case law on whether the Act limits the scope of the subsequent further information the Council can seek to only the specific assessments the Council first sought. The Act provides that the Council "may require additional information relating to the request" and the term "request" in that clause is used in reference to the request for a plan change (i.e. the application). It might be considered that the Council could only ask for information on issues that arise from the applicant's response to the initial information the Council requested. However, the Council has received a legal opinion that the Act does not limit subsequent Council requests to the scope of the original Council request.
54. On the basis of that legal opinion the Council's request for an assessment of the implications of development exceeding the road network capacity to be provided by the LTCCP works is valid. The applicant's indication that it is refusing to provide the information required is grounds for rejecting the application. The alternative for the Council in respect of this issue is that the Council raise it in a submission on the plan change.
55. There are also problems with the proposed rule itself which proposes to limit development subject to the Northern Arterial. Particularly, in that it proposes to remove the limit on development once an outline development plan or resource consent is approved, rather than when the Northern Arterial is completed, or at least work has begun. The assessment does not recognise that it could be years between any RMA approval and the road network capacity being available. Having queried the applicant's consultants on this, they have responded that it is not considered an issue because the assessment without the Northern Arterial was very conservative. This may mean that the applicant considers that any delay between receiving RMA approval and construction is unlikely to result in the level of development significantly exceeding the capacity of the network. Leaving aside the issue of whether even 50 per cent development would be appropriate without the Northern Arterial, this approach means that the community would bear the risk of significant traffic effects if there is in fact a considerable delay between any RMA approval and the completion of the road. However, this is a matter of merits, as the applicant has "assessed" this potential effect as not being significant. The matter could be addressed in a submission by the Council.

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56. In terms of the proposed rule, a further concern is that the limit on development, until the Northern Arterial receives RMA approval, only applies to subdivisions and no similar rule is included in the zone rules. The effect of this is that the limit would not apply to any developments not involving a subdivision, e.g. commercial development or multi-unit residential development. However, the applicant's consultants have recently indicated that the applicant is prepared to have a similar rule in the zone rules.
57. Another issue that has been raised by the Council's transportation engineer is that the Marshlands/Mairehau intersection will need upgrading to accommodate the Prestons development, but that there is no provision in the LTCCP for such upgrading. The engineer is concerned that the modelling does not accurately illustrate the likely effects of the Prestons development, particularly as the information from the applicant is that the intersection is already operating over capacity. The applicant has indicated that it does not consider any upgrading will be required. Again, this is a matter of merit that the Council could lodge a submission on.
58. Finally, the Council's transportation engineer is concerned about the safety along the proposed urban/rural interface road frontages of Mairehau Road and Lower Styx Road. The traffic speed limits are unlikely to be reduced to 50 kilometres per hour along these roads, potentially creating a traffic hazard with the residential properties fronting onto those roads. The applicant has indicated that the road environment will be modified into a more urban environment through the installation of a kerb, footpath and street lighting which will assist in reducing car speeds. Although it is agreed that this would assist in resolving the safety issues, there is no provision in the plan change requiring such works and they are not subdivision assessment matters in the existing City Plan. This is a matter that could be dealt with through a submission on the plan change.

Stormwater

59. The plan change request includes a Blue Network Diagram that indicates, amongst other things, a stormwater management system, including 14 stormwater retention basins. The plan change requires compliance with this diagram. The information accompanying the plan change includes an assessment of the stormwater system to determine whether a stormwater system is feasible. The plan change indicates that the retention basins in the Diagram will be dry most of the time (except in a one in 50 year storm event) and therefore can be used for recreational purposes.
60. The modelling is, however, based on four large retention basins, rather than the 14 basins in the diagram. This and a number of other matters have raised concerns for the Council's stormwater engineers regarding the proposed system. The Council engineers consider it likely that the area of land required for stormwater retention and treatment is likely to be bigger than indicated in the diagram, possibly twice that indicated (possibly 10-12 per cent of the plan change site), and that the basins are unlikely to be dry for most of the time, as the information provided by the applicant suggests a relatively high water table.
61. These concerns are issues of merit and are only relevant at this stage of the process if they could be said to be of such significance that the plan change is not in accord with sound resource management practice or would be inconsistent with Part 5 of the Act. The fact that the area of land required for stormwater management is likely to be greater than indicated is not necessarily a problem, provided there is no assumption that the Council accepts that the land indicated in the diagram will be sufficient for stormwater management. There is a risk that once the diagram is incorporated in the City Plan, it would be implied that the land area indicated was accepted by the Council as sufficient. This would be particularly problematic considering that approximately twice as much land may, in fact, be required. It may also lead to pressure on the Council to accept underground retention systems, rather than above ground naturalised systems as supported by the City Plan and the supporting material for the plan change. These issues could be addressed at the hearing of the plan change if the Council lodged a submission.

3 Cont'd

62. The greater area required for stormwater management is likely to result in a reduction in the number of households the plan change will provide for. However, this will not affect the issue of how consistent the change is with the density required to be achieved by PC1, as that density requirement is based on "net density" which excludes stormwater retention and treatment areas from the calculation.
63. More problematic is the fact that the basins are unlikely to be dry. This will significantly limit the recreational potential of the basins, generally limited to probably walking/cycling tracks along the top edge of the basins. The change includes a Green Network Layer Diagram identifying "Green Links/Linear Park" (the linear park), which includes all of the stormwater retention basins and the major waterways. As indicated earlier, the change includes higher density residential areas and these have been located, in part, on the basis of proximity to the linear park. This is consistent with the principle of ensuring higher density residential areas have access to higher levels of public open space, as contained in PC1 and the change itself. The open space potentially provides two benefits for higher density residents in the form of visual open space and recreational space that help compensate for the lack of private open space. If the basins are wet rather than dry, and therefore their recreational potential is considerably reduced, the location of the higher density areas proposed becomes questionable. This uncertainty about the appropriateness of the location of the higher density areas is increased in this case, where it appears that almost twice as much land as indicated in the plan change may be needed for stormwater management. This could result in most of the linear park being required for wet basins, as well as possibly other land. Further comment on this issue is contained below under the heading "Open Space".
64. A final stormwater matter is the potential operational costs of the proposed stormwater system. The applicant was asked to assess the potential operational costs comparing the proposed system of 14 basins in a linear design with an alternative of only two. A brief statement has been provided which indicates that there may be some difference in costs, but that the applicant is unable to provide an accurate cost. Initial calculations by the Council stormwater engineers conclude that the increased maintenance costs for 14 dry basins as compared to two, or even four basins, would be in the order of \$30-40,000 per year. Wet basins are estimated to cost 60-90 per cent more than dry basins, so the additional costs could exceed \$150,000 per year for basins of the same size. Considering the earlier comments that wet basins were likely, and that double the land area indicated in the plan change for basins may be required, the proposed design could result in considerable annual costs for the community. For this reason the stormwater engineers consider that the proposed stormwater design is inefficient compared to stormwater designs involving a few larger dry basins. On the basis that the ponds are, in fact, likely to be wet ponds, the plan change site is also not an efficient area for urban development from a stormwater perspective. Being a growth area that has not been identified in the City Plan or PC1, these additional costs will not have been taken into account in the LTCCP. In fact the development of this growth area at the same time as those that have been identified may well result in the operational budgets having to be spread more thinly over a larger number of areas.
65. As mentioned earlier, the City Plan contains policies that have consistent themes of the efficient provision of infrastructure and consideration of growth and servicing costs. This raises questions about whether the development of this site is consistent with Part 5 of the Act or is in accordance with sound resource management practice. To the extent that this is a merits issue, it is appropriate to be cautious about recommending rejecting the plan change on those grounds alone, particularly as there is little direct case law to provide guidance. However, this, on top of the fact that this plan change is likely to impose a cost on the community that has not been provided for in the LTCCP, and that the Council has not agreed to, suggests that the plan change is not in accordance with sound resource management practice. There may be difficulties in the Council lodging a submission on this issue, both because of the uncertainty as to what the final stormwater management system will be, and because of uncertainty regarding ongoing costs to the community.

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Open Space

66. The plan change indicates "Green Links/Linear Park" (linear park) as part of the design of the development. It predominantly runs north-south, linking either side of the existing Marshlands Domain, with a number of other less significant linear parks running east-west. The north-south linear park includes a waterway and the main stormwater management areas as well as other open space. The applicant has clarified that the Open Space 1 zone provisions of the Plan should apply to linear park. These provisions allow very little built development.
67. A significant issue raised by the Greenspace Team, and raised with the applicant a number of times, is that the linear park proposed does not accord with the reserve priorities the Council would have for this area if the plan change was implemented. The order of those priorities are as follows:
 - (1) Extending Marshlands Domain by 2-3 hectares (making a total of 4-5 ha.)
 - (2) Including neighbourhood parks of approximately 4,000 square metres, spaced at no more than 800 metres apart i.e. 2-4 additional parks in the Prestons site
 - (3) A central commercial area park of approximately 1 hectare
 - (4) Reduced green linkages.
68. The Greenspace Team indicate that parks in (1) and (2) at least, should not include stormwater management areas, but could adjoin such areas.
69. The Greenspace Team has also indicated that preliminary calculations suggest that the linear park shown exceeds the likely amount that could be achieved through reserve contributions, even excluding the indicated areas for stormwater management. That would leave the Council to fund, by other means, the reserves indicated in (1) to (3) above.
70. The issue with the plan change is that it indicates a different provision of open space from that sought by the Council, but also contains rules that require the development of the site to be in accordance with the open space indicated. If a subdivision application is made showing reserves in the areas indicated in the plan change, the Council could not refuse it, as it would be a controlled activity which only permits the Council to impose conditions. Therefore the effect of the change is to impose a provision of reserves that the Council does not agree with.
71. This is a fundamental issue that has arisen, and is arising, in other urban growth proposals. The provision of land for reserves is a matter that is governed by the Development Contribution Policy of the Council under the Local Government Act. This gives the Council the sole discretion to determine what land it takes as reserve. The Council can agree that land should become reserve and agree that this be included in the City Plan. However, it would be contrary to sound resource management practice to over-ride the Council's discretion and to create an expectation of, and implicit obligation for, a particular reserve provision that the Council does not agree to. The objectives and policies of the City Plan itself make it clear that the reserves are to be resolved in accordance with the Development Contributions Policy and that the selection of reserve land is to be a decision made by the Council .
72. The City Plan also includes under those policies an indication of what the Council will seek to provide, including neighbourhood parks at least 2-3,000 square metres that are accessible to the user population and land for district sports fields of at least 4 hectares, as well as linkages between areas of public open space. The reserve provision sought by the Greenspace Team is more consistent with this than those indicated in the plan change.
73. There are also a number of factors that create uncertainty about the outcomes of the plan change. Even if the Council did agree to take all the reserve contribution it could as land in the linear park, there would still be additional parts of the linear park not owned by the Council. The plan change provisions would still require them to be largely open space. But this could be privately owned open space, as there is nothing in the change that would require them to be accessible to the public. The establishment of green links indicated in the change, as public links, is therefore in doubt.

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74. It is also not possible to determine which particular parts of the linear park would, in fact, be available to the public. This is an important consideration with respect to the location of the higher density residential areas proposed. These areas should be located close to open space, not just to provide some visual relief to compensate for the higher built density, but also to provide recreational opportunities to compensate for the reduced opportunities provided on their own properties. PC1 requires that the higher density areas be provided with a higher levels of **public** open space to meet their recreational needs. The uncertainty about the location of public open space means that it is not possible to determine whether the higher density residential areas proposed are appropriately located.
75. The Council could potentially seek to deal with these issues by making a submission on the plan change itself. It may be difficult to prepare a submission that is sufficiently specific on the amended reserve provisions sought without access to the applicants detailed knowledge and site. It is also likely to require major changes to other aspects of the development layout, such as the relocation of higher density residential areas. Leaving the matter to be resolved at that stage is also likely to limit options, as the choice for the provision of reserves would be limited to what is contained in the submission or that contained in the plan change. A better distribution of reserves and other land use activities than either of those options may exist that is more acceptable to both the Council and the applicant.
76. Legal advice received by the Council is that the concerns expressed above about the conflict with the principle of the Councils discretion to select reserve land, the view that the proposed provisions would not achieve the City Plan policies, and the uncertainty that would arise from notifying the change in its current form, are grounds on which it could be concluded that the plan change should be rejected. These issues raise concerns that the plan change is not in accord with sound resource management practice and, to some extent, is contrary to Part 5 of the Act in terms of the proposed rules not implementing parts of the policies of the City Plan.
77. It is also considered to be contrary to sound resource management practice to compel a local authority to accept reserves which are unwanted by it and/or the Council has other priorities for the acquisition and development of reserves.
78. For the all the reasons discussed above, it is the conclusion of staff that this aspect of the plan change is not in accordance with sound resource management practice. It would also appear to be inconsistent with Part 5 of the Act. As noted earlier, there are likely to be considerable difficulties in attempting to deal with this issue through a submission on the plan change.

Rural/Urban Boundary

79. The Council's first Request for Information (RFI) sought an assessment of how well the provisions of the plan change achieve Policy 6.3.10 of the City Plan, which requires a well defined barrier to further urban growth. The applicant's response was to modify the plan change to include rules limiting access to neighbouring rural land from the plan change site, require slightly lower density sites (800-1,000m²) on some rural boundaries, and require some form of landscaping on most rural boundaries. It also noted that the site is bordered in a number of places by roads, golf courses, and more productive and versatile soils (between the western boundary) and Marshlands Road. This is simply a statement of the measures the plan change is proposed to contain, not an assessment of how effective those measures will be. For example, there is no assessment of why a golf course should act as a barrier to urban growth, particularly as golf courses have been known to have sold land, in some cases the whole course, for residential development. Nor is there an assessment of how banning access between the plan change site and adjoining rural land will hinder the urban development of those adjoining sites, particularly as they have other access options to the surrounding road network. Although the response includes statements that these measures will be effective, no assessment is included to indicate the basis for these conclusions. Instead the latest response simply refers to parts of the applicant's landscape report which comment on landscape effects of the measures proposed, but do not comment on the effectiveness of those measures as a barrier to urban growth. The information requested by the Council on this issue has therefore not been provided. This is an issue of some significance in this case, as the nature of the plan change site, in terms of it's location and shape, means that there are aspects of it that would tend to encourage further urban growth in the locality.

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80. As indicated above, the application now includes landscape requirements on some parts of the proposed urban/rural boundary. This was particularly in response to the Council request for an assessment on how well the plan change achieves Policy 6.3.12, which requires a transition of low density housing and an improved landscape quality on the urban/rural boundary. There are issues relating to whether what is now proposed is entirely consistent with this policy, and the assessments are not entirely clear in terms of the reasoning behind the different landscape provisions that apply to different parts of the urban/rural boundary. The latter is aggravated by the lack of any reasons for rules and assessment matters for the landscape provisions. However, these are not considered to be matters that would necessitate that the plan change be rejected, and not notified, and could potentially be dealt with through submissions on the change.
81. A final matter is that the applicant's consultants have acknowledged in a brief statement that there is a risk of damage/injury resulting from golf balls from the adjoining golf courses entering the residential areas. There is no detailed assessment of that risk and it has not been included in the assessment of effects to date.

Suburban Centre/ Retailing

82. There are two matters of some significance in respect of the suburban centre and retailing proposed. The plan change application proposes something in excess of 6 hectares. of land as Business 2, with the majority of it in a block extending to Marshlands Road. A second relatively significant commercial area is to be located generally around the Marshlands Domain which the plan change identifies as "urban village". The two commercial areas are separated by a distance of approximately 250 metres, which will be occupied predominantly by medium and low-medium density housing. The two commercial areas span a distance of approximately 880 metres.
83. The applicant was requested to provide an assessment of how such a commercial centre layout would affect such matters as accessibility, functionality and social cohesion, particularly compared to the option of a single centre. This issue was raised, in part, because Policy 6.2.2 of the City Plan seeks compact suburban centres. Although the initial response from the applicant was that a report was being prepared by the applicant's urban designers, the Council has only received a brief statement from the applicant's urban designers that they do not believe that the Masterplan creates two centres, as the residential area between them serves as a connector rather than a separator. It goes on to state that the two areas are linked by roads and pedestrian and cycle routes, and that the commercial areas will be accessible to the residents in the higher density areas and the retirement village to the east. This is little more than a conclusion/opinion, without an assessment that explains how the intervening land will act as a connector or how simply providing access routes will, in any way, increase the connectivity between the two separated areas, or accessibility as a whole. In particular, it does not provide the assessment requested, which sought a comparison between the effects of the two commercial areas proposed, even if the residential area does act as a connector of sorts, as compared to a single commercial area.
84. In terms of the connectivity issue alone, the urban design advice I have received is that whether people are likely to walk between the two areas is highly dependant on the quality of the connecting links. There are no provisions included in the plan change to ensure particularly high quality outcomes are achieved.
85. The second issue of significance was the potential retail distribution effects on other district centres of the commercial development permitted in the plan change. The assessment initially provided was of concern because it was based on a retail floor area of 8,000 square metres (plus the existing service station and produce store). However, the land area, particularly the main block that fronts Marshlands Road, was of a similar size to that which could, and does, accommodate much larger retail developments. The plan change has been amended a number of times, and the current version now limits retailing to a total floor area of 12,000 square metres. Although the only amended assessment of effects received assesses a slightly different option (10,000 square metres plus the existing service station and produce store), staff have now been advised that the difference is unlikely to result in significant effects on other district centres. As such the amended assessment provided is accepted as adequate in respect of this issue.

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Other issues

86. The plan change indicates a proposed bus route through the site, but no assessment was provided on the realistic possibility of bus services being extended into the plan change site. The Council asked for such an assessment and the response was that there is ongoing consultation with ECan on this issue, but the response also appears to indicate that ECan considers it unlikely that routes would be extended to the application site in the foreseeable future. To that extent it is accepted that an assessment has been provided.
87. Related to the previous issue is the accessibility of community facilities. The applicant was asked to assess this and the implications of this development on the efficient provision of community facilities. The applicant's responses do acknowledge that the size of the development will be such that it will exceed the capacity of the planned library network and would not be sufficient, in itself, to justify a new one for the site. It also identifies that it could not be efficiently serviced for a neighbourhood community building. In terms of how accessible community facilities will be for the plan change site, which will largely be facilities outside the plan change site on the basis of the above, the response has simply been that the site is extremely well connected by roading, cycling and pedestrian facilities and that consultation on public transport is ongoing. Leaving aside the merits of that conclusion, that statement is hardly an assessment. However, considering the information that the application now provides on the provision of community facilities and the likely extension of bus routes, what would be required to complete an assessment does not seem significant enough to be worth pursuing.
88. The original urban design assessment indicated that a number of outcomes were to be achieved through the plan change, including:
 - (i) A limit on block sizes (the distance between streets)
 - (ii) Ensuring lots will face the street (avoiding long narrow sections that extend away from the street)
 - (iii) Achieving mixed building and plot typology types, including terrace housing and the development of a "high street" on Prestons Road and the achievement of mixed use for in the urban village (surrounding the domain), and
 - (iv) Achieving a high quality built environment.
89. The plan change rules do not include provisions to address the first two issues and the applicant has been asked to clarify what was being proposed. The applicant's final response is that it is not intending to address these issues in the plan change. The most recent urban design advice received is that the nature of the plan change, particularly the long narrow shape of the site and the required roading pattern make it unlikely that these will be significant issues for this site.
90. In respect of paragraph 88(iii), the applicant has also indicated that these are not intended to be addressed in the plan change. In respect of paragraph 88(iv) the plan change did at one stage include a provision for the design and appearance of buildings to be a controlled activity in the higher density residential areas (i.e. similar to Living 3), but this has been removed and the applicant has advised it is not intended to control this issue. The control of the design and appearance of higher density development has become relatively common, with the New Brighton plan change incorporating requirements for resource consents, and the Environment Court decisions on Masham and Belfast including controls on dwelling orientation to the street and the extent of frontages used for garaging. These are matters that could be dealt with through a submission on the plan change.
91. The plan change includes provisions that permit residential density areas to be transferred, subject to certain requirements. However, there are inconsistencies between the Living G zone rules and the corresponding subdivision rules relating to transfers. The zone rules include additional important location requirements, but these have been omitted in the subdivision rules. The subdivision rules indicate that such transfers are discretionary activities, but it is not clear whether the zone rules also require discretionary activity consent. Staff consider that the discrepancies may not be intentional, and that both rules are intended to require discretionary activity consent and that the location criteria were intended to apply to both sets of rules. Staff have recently been advised by the applicant's consultant that this assumption is correct.

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92. The plan change includes a number of rule variations to the three different residential density areas that differ from the equivalent provisions that apply to residential development in comparable Living 1 to 3 zones. Generally they lead to less protection for adjoining neighbours or will have greater effects on the wider community. For example, the original change included no controls on retailing in the residential areas and the more liberal recession plane requirements of the Living 4 zone applied to the medium density zone (similar to Living 3). The applicant was asked to assess why these increased adverse effects are necessary. The applicant responded that it did not consider it necessary to address these issues because similar provisions had been included in the Masham rezoning. The applicant has, however, amended some of the rules identified, including the lack of restriction on retailing, to improve consistency. However, it has also made recent amendments to the rules which have increased site coverage and height, and reduced outdoor living space. These matters could be addressed through a Council submission.

Conclusions

93. The plan change has insufficient detail to enable it to be considered as a resource consent. There are a number of matters of concern with the plan change and there is no particular public benefit proposed, so it would not be appropriate for the Council to adopt the plan change.
94. There are a number of significant issues where the applicant has declined to provide the information sought by the Council. There are a number of significant issues, particularly relating to reserves and infrastructure, that lead to the conclusion that the plan change is not in accord with sound resource management practice. These are reasons that are grounds for refusing the plan change.
95. The alternative is for the Council to seek to deal with these issues through lodging a large number of submissions. To be able to submit on some of these issues would require significant assessments to be undertaken by the Council. For example, the transport issue relating to the limits that may need to be placed on the development until the LTCCP works are complete, will require considerable traffic modelling. Considering the Act places the obligation to provide an assessment of all the relevant factors on the applicant, these are not tasks that the Council should have to undertake. As also indicated earlier, some of the issues are likely to be difficult for the Council to deal with in a submission.

THE PREFERRED OPTION

96. The preferred option is **Option 3 - Reject the Plan Change** on the grounds that the applicant has declined to provide information requested and that the change is not in accordance with sound resource management practice and is inconsistent with Part 5 of the Act.

4. BYLAW REVIEW PROCESS – DATA COLLECTION AUDIT

General Manager responsible:	General Manager Strategy and Planning, DDI: 941 8281
Officer responsible:	Programme Manager, Strong Communities, Strategy and Planning Group
Author:	Alice Mortlock, Assistant Policy Analyst, Strategy and Planning Group

PURPOSE OF REPORT

1. At a special Council meeting to consider proposed new bylaws on 19 June 2008, the Council made a series of resolutions seeking a review of, and report back on, the bylaw review process.
2. The purpose of this report is to advise the Regulatory and Planning Committee on one aspect of the Council's resolution of 19 June 2008, which requested staff to:

“Review how adequate the Council's current data collection system(s) are in meeting the requirements to demonstrate nuisance issues when the Council reviews or considers making new bylaws.”

EXECUTIVE SUMMARY

3. With the adoption of eight new bylaws there was a recognition among Councillors and staff that there are flaws with the Council's current data collection system regarding the detection of nuisances and the recording of complaints and offences for the purpose of bylaw making. There is a desire by Councillors for staff to provide quality data to support the analysis for the next bylaw reviews. For example, this might include data to support the need for current clauses in the bylaw(s), data to evaluate the possibility of regulating new issues, or data to dispel or confirm perceptions of a nuisance.
4. Bylaw making must follow the process set out in the Local Government Act 2002 (LGA 2002). This process includes the section 155 analysis (generally: identifying a problem and whether a bylaw is the most appropriate way of dealing with the problem). The requirements in section 155 also align, to some extent, with the general decision-making requirements contained in sections 77-82 of the LGA 2002, including requirements in relation to decisions, community views, compliance with procedure and consultation. During the major review of bylaws in 2008, there were difficulties in undertaking LGA 2002 requirements because the Council's systems for collecting information about nuisances and issues were highly variable. For some bylaw reviews information systems were inadequate or the collected information was in a form that meant the issues were difficult to identify, or the information was difficult to retrieve.
5. The LGA 2002 establishes a much more rigorous test to establish nuisance in bylaw-making than the Local Government Act 1974 (LGA 1974). The intention behind the Act's requirement to review bylaws is to ensure that they are relevant and appropriate in the current context. This is particularly important considering that a violation of a bylaw can lead to a range of enforcement measures (depending on the particular bylaw), including fines being issued of up to \$20,000 on summary conviction; seizure of property or the power to recover damages; powers of entry by local government enforcement officers; the police being given powers of arrest, search, and seizure¹; or prosecution by the local authority.
6. Information collection is important and may contribute to a clearer understanding of whether a significant problem exists, whether a bylaw is the most appropriate way of addressing a problem, whether an issue is better dealt with under other legislation or through another organisational body, and what options (besides a bylaw) are available to address perceived issues. Evidence to validate or dismiss a perceived issue or establish evidence of a new issue or nuisance assists Councillors and Council officers when reviewing a bylaw to ascertain what matters should or should not be included in a new bylaw.

¹ This is only in relation to a bylaw prohibiting liquor in a public place.

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Problems and Proposed Improvements

7. After interviewing staff in the Council Call Centre, in Information Management and Communication Technology (IM&CT), staff responsible for 2008 bylaw reviews, and operational staff², a number of weaknesses with the current data collection systems were identified. In some cases officers had limited or no information about complaints or identified nuisances available to them. This was a failure of the current data collection systems.
8. There are a number of improvements being made to the organisation's data collection systems in relation to the bylaw reviews. These include:
 - (a) The identification of a clear staff group responsible for each bylaw and its review, including the bylaw group's responsibility to develop and present an annual report to the Regulatory and Planning Committee on the monitoring of each bylaw's operation and any emerging issues. There will be a coordinated approach to the delivery of annual reports to the Regulatory and Planning Committee to avoid a large number of reports going to the Committee.
 - (b) The identification of a unit (Strategy and Planning Group) which will carry out a regular review and analysis of Service Request System³ data for all bylaws on behalf of the groups that are responsible for the bylaws.
 - (c) A report template will be developed to assist the group responsible for the bylaw(s) in reporting to the Regulatory and Planning Committee annually on the monitoring of each bylaw's operation and any emerging issues.
 - (d) Amending the Service Request System categorisation so that service requests can be linked to specific bylaws.
 - (e) Ensuring the Service Request System is able to record 'new' nuisances/issues more effectively.
 - (f) Ensuring a more consistent approach to the recording of enforcement activity.
 - (g) An improved system for staff to report and record issues/nuisances.
 - (h) An improved use of residents survey information and of specific research and campaigns to assist in monitoring the bylaw(s) operation and the section 155 analyses required for each bylaw review.
9. **Attachment One** is helpful in understanding the current system compared with the updated available information sources for the next bylaw reviews.

FINANCIAL IMPLICATIONS

10. There are no financial implications, though there will be some staff time required to establish the improved systems and in preparing reports on the operation of bylaws. The improvements to systems are not extensive and will largely become automated once established.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

11. The ongoing staff costs associated with this report are budgeted within the 2009-2019 LTCCP.
12. The cost of reviewing the Council's bylaws on a regular basis will require additional funding in future years. These costs will be reported to the Council once a rolling programme of bylaw reviews has been finalised. Additional funding will also be required to institute any changes that may arise as a result of modification to the bylaws.

² Rangers, animal control officers, traffic wardens, and enforcement officers.

³ The Service Request System is a system of recording and managing all customer contacts and associated workflow through to completion. A 'service' is an activity, facility or utility provided by the Council, with associated processes (Service Events) which may be initiated by a member of the public. For example, a complaint about a pothole in the road. The Service Request System provides a number of different types of Service Event:

- Service Request (asking for something to happen)
- Event Query (asking about the status of a Service Request)
- Incident Report (telling the Council something that affects a service)
- Service Inquiry (asking for information about a service)
- Feedback (complaints, compliments, and suggestions)

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LEGAL CONSIDERATIONS

13. There is a requirement under section 155 of the LGA 2002 for the Council to determine whether a bylaw is the most appropriate way of addressing a perceived problem. It is necessary therefore that the Council have reliable information captured over time about various incidents that occur on land or infrastructure that the Council owns or for which it is responsible. To enable the Council to be able to achieve this, it is necessary for accurate records to be kept of the results on the operation of each bylaw and other emerging nuisances/issues that occur, so that the requirements of section 155 of the LGA 2002 can be properly fulfilled.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. This report aligns with the Enforcement and Inspections Activity Management Plan in the 2009-2019 LTCCP. Without the ability to create regulation through the required process, the Council's ability to deal with nuisances/issues is undermined.

ALIGNMENT WITH STRATEGIES

15. Not applicable.

CONSULTATION FULFILMENT

16. In relation to this report, the matter has been consulted internally with IM&CT and Call Centre officers, the Transport and Greenspace Unit, the Strategy and Planning Group, the Inspections and Enforcement team (including Animal Control), and the Water and Waste Unit.

RECOMMENDATION

That the Regulatory and Planning Committee **notes** that:

- (a) That the report be received.
- (b) That a report on the operation and enforcement of each Christchurch City Council Bylaw be presented to the Regulatory and Planning Committee on an annual basis.

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BACKGROUND

17. On 19 June 2008 at a special meeting of the Council, eight new bylaws were recommended to the Council for adoption as a result of a review of 31 Council bylaws. The Council's resolution requested that staff review how adequate the Council's present data collection system is in meeting the requirements to demonstrate nuisance when the Council reviews or considers making new bylaws, in order to improve the bylaw making process in the future. This project was also undertaken to update the Service Request System to align with the eight new bylaws and to determine how to gain greater consistency across the organisation in respect of data collection processes. The Council requested that information on this matter be reported back to Councillors.
18. An audit was carried out by staff which involved interviewing officers responsible for the previous bylaws, enforcement staff, IM&CT officers, and Customer Service representatives⁴, and subsequently, improvements either have been or are being made to the information systems.

The need for improved information systems

19. Bylaw making must follow the process set out in the LGA 2002, which includes the section 155 analysis (Generally: Identifying the problem and whether a bylaw is the most appropriate way of dealing with the problem). The requirements in section 155 also align to some extent with the general decision making requirements in sections 77-82 of the LGA 2002. In order to carry out the section 155 analysis, evidence of the nuisance or issue is required. During the last bylaw reviews there were difficulties in adequately undertaking the LGA 2002 requirements because the organisation's systems for collecting information about nuisances/issues were either inadequate or collected information in a form that meant the issues were difficult, if not impossible, to identify.
20. The LGA 2002 requires a much more rigorous approach to bylaws than the LGA 1974. The intention behind LGA 2002's requirement to review bylaws is to ensure that they are relevant and appropriate in the current context. The LGA 2002 requires the Council to go back to first principles and to establish:
 - (a) Is there a significant problem
 - (b) Is a bylaw the most appropriate way of addressing the problem
 - (c) Are there other, more effective options?

Evidence to validate or dismiss a perceived issue or establish evidence of a new issue or nuisance assists Councillors and Council officers when reviewing a bylaw to ascertain what matters should or should not be included in a bylaw.

What do the information systems need to do for bylaw purposes?

21. The information systems need to collect information in a manner that either confirms or denies the existence of nuisances that bylaws are designed to address. They also need to detect and verify the existence of nuisances the Council has the power and authority to regulate but are not addressed in current bylaws. Other purposes of information systems include the appropriate capture, investigation and resolution of nuisances and complaints.

Weaknesses in information systems used for recent bylaw reviews

22. After an audit of the Council's data collection systems in relation to the detection of nuisances and the recording of complaints and offences, staff have come to some conclusions which are discussed in this report. There are some key weaknesses in the current information system which hindered rather than assisted the recent bylaw reviews (particularly the section 155 analysis).

⁴ This included discussions about their data collection systems and methods of analysis.

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Ownership Issues

23. During the last bylaw reviews there were some issues with ownership. It was not always clear which staff unit held the responsibility for reviewing each bylaw. There was also no clear staff role responsibility for each bylaw review. This complicates the data collection process as it can be difficult to ascertain who should be responsible for collecting data regarding a certain bylaw. This is further complicated by some complaints having no obvious target or not fitting logically with any staff units or teams. In these latter cases there is the potential for data to be lost as a consequence.

Inconsistent methods of data collection

24. There are inconsistent methods of collecting information across the organisation. The audit found that there is no person within the organisation who knows all the data sources the Council currently holds, how they link up across the organisation, what information they contain, and whether they are adequate.

Over-reliance on customer complaints

25. There are disadvantages with gathering data only from the Service Request System. The data in the Service Request System indicates people's level of irritation with an issue, but are not necessarily an indication of how frequently an issue or nuisance is occurring or whether the issue is significant. For example, the percentage of people responding to the Residents' Survey who register their annoyance with, for example, noise, would represent about 30,000 people. However, the Christchurch City Council Customer Centre would only receive about 10,000 complaints about noise per year.⁵ The latter complaints may only represent about a third of those affected by a nuisance, if not less. Furthermore, when it comes to extracting the data from the Service Request System, while word searches are useful, they will not be able to differentiate whether the data relates to a bylaw-related nuisance, or whether other legislation or another organisation's mandate covers the nuisance.

A number of Unit databases

26. There are multiple team, group or unit-owned databases which hold information on offences, infringements and some complaints, but these are not standardised. There is the potential for data to be doubled up between the Service Request System and the individual databases or not to be captured or stored in any of them. For some bylaw reviews, this enforcement activity data was utilised as evidence in support of some of the existing bylaw clauses.

Customer complaints not collected in ways that supported bylaw analyses

27. Data analysed for the recent bylaw reviews was primarily based on the number of requests for service via the Service Request System and/or data from team or unit databases on the number of offences committed. Some reviews related to previous bylaw clauses as the primary rationale behind their continued existence. If data was collected for the reviews, it was gathered incrementally and often not analysed until a section 155 analysis was required. The quality of the assessment was not ideal, because at times the information about complaints or nuisances was inadequate.

4 Cont'd

⁵ There is a difference between the percentage of complaints made compared with the percentage of people who consider something to be an issue, but do not make a formal complaint. The Inspections and Enforcement Unit receive service requests around over-hanging trees and actions them. However it is not a true reflection of how many incidents the Unit deal with. For example, when a complaint is received and the site visited, the enforcement officer is required to identify other addresses which are offending. This at times can be another 20 addresses. In the 1999 annual residents survey, about 21 per cent of respondents noted noise from neighbours as being a problem. Of these, 30 per cent considered it a major problem; 25 per cent sometimes a problem; and 44 per cent considered it a minor problem. Those who considered noise from neighbours to be a major problem were more likely to complain (65 per cent) as compared with those considering it sometimes a problem (52 per cent), while only 23 per cent who considered it a minor problem complained. Overall less than half of the total (42 per cent) complained. These figures have a sample error of 9 per cent at the 90 cent confidence level, so this must be taken into account in projecting the figures to the total city population. But even taking this into account, it does reveal that the potential number of complainants is much higher than the Council actually receives. The numbers of those who state they consider neighbour noise a major problem could range from 11,000 to almost 30,000 compared with the 8,294 complaints received in 1999 by the Council Call Centre.

6. 8. 2009

28. Some information coming through the Council Call Centre is not captured in the Service Request Systems, but is sent directly to individual units to investigate. All calls need to be logged through the Call Centre and entered into the Service Request System.
29. Systems for gathering information on complaints that do not currently breach bylaws, but are 'new' nuisances the Council could consider including in a bylaw, have been inadequate.

Banks Peninsula data collection

30. It proved difficult, during the last bylaw reviews, to find pre-amalgamation data from the former Banks Peninsula District Council as their information systems were not accessible. Calls to the Council Call Centre should now capture any complaints or nuisances in the Banks Peninsula area. Given that the physical, social and economic environment is often significantly different on Banks Peninsula than the rest of the city, it is particularly important that data about nuisances in Banks Peninsula are collected.

Failure to collect information at closure of service request or investigation

31. The Service Request System is currently not collecting 'action information' or investigation closure information consistently. It is important that information is collected following the investigation of a complaint about whether an issue was confirmed and whether, and how, the investigation or complaint was resolved (for example, what action was taken).

Responsibility for data collection and reporting

32. One clear systemic weakness identified is the lack of clear staff ownership and responsibility for ensuring adequate data is being collected for the review of each bylaw.
33. An 'owning group' has been identified for each bylaw. Organisational arrangements between the owning group, the Strategy and Planning Group, the Legal Services Unit, and the Inspections and Enforcement Unit are being clarified. However, it is expected that the owning group will ultimately be accountable to the General Managers' Bylaws Group, for feeding back information around data collection as appropriate. This will include the responsibility of leading and presenting an annual report to the Regulatory and Planning Committee (the Committee) on the operation of each bylaw and any emerging issues.
34. Strategy and Planning Group staff will carry out a regular review and analysis of Service Request System data for all bylaws on behalf of the groups responsible for the bylaws. The results of these efforts will be fed back to the owning groups once a year (including any recommendations around the addition of new Service Request System categories).
35. A template for reporting back on the monitoring and operation of bylaws to the Committee will be developed. This will be, in general terms, a generic report which touches on the administration, enforcement and any emerging issues of each bylaw. It will be the owning groups' responsibility to fill out the reporting template and to determine if further information is required to produce a satisfactory insight into the operation of the bylaw(s).

Potential information sources could be used for future reviews

36. In an effort to generate data on nuisances to support the section 155 analyses of the next round of bylaw reviews, and to create greater consistency around the data collection processes across the organisation, officers have made a number of modifications to the Service Request System, and have identified new information sources which can be used to collect information on 'perceived' and 'new' nuisances. These new information sources are elaborated below.

4 Cont'd

Customer complaints

37. As a result of undertaking this audit, staff determined that there was a requirement for categories to be added to the Service Request System to align with the clauses in the newly adopted bylaws. Modifications to the Service Request System will pick up complaints made by the public which should confirm the existence or lack of nuisances related to the new bylaws.
38. The Service Request System will also be able to assist in the identification of 'new' nuisances. New nuisances/issues will be identified as such because whilst they will not be accommodated by the existing complaint categories in the Service Request database, they will be captured in 'miscellaneous' categories. Strategy and Planning staff will be responsible for monitoring these miscellaneous categories periodically, in addition to monitoring the categories which directly apply to each bylaw. Additional categories may need to be added to the Service Request System in the future to capture data effectively around these emerging issues.
39. A programme of work is currently underway to replace the current Service Request System with a new system – Local Authority System Enhancement and Replacement (LASER),⁶ which includes the Service Inquiry Management System (SIMS). SIMS will be able to log events to a property address or a geospatial location and provides the opportunity for improved reporting – for example a pothole incident could be logged against a point on the road where the pothole is, rather than the current situation where it is logged against a nearby property address. SIMS could also find information using quite specific searches, for example "the amount of broken glass within the last three months", "the number of wandering dogs reported in parks", or "the number of Incident Reports in the area bordered by Colombo, Lichfield, Manchester and Hereford Streets, grouped by Service".
40. In some cases there are specific reasons why databases that provide information about nuisances in relation to specific bylaws should remain with the unit concerned. For example, the Water and Waste Unit, in addition to having Service Request System categories that are well aligned to bylaw clauses, collects other information relevant to bylaw making and maintains a number of databases for this purpose. Refuse stations provide the Water and Waste Unit with a waste analysis tool and undertake a triennial waste depot audit. This supports the review of the Water and Waste Unit bylaws.⁷ Furthermore, contractors such as City Care report to the Water and Waste Unit once per year regarding issues such as tampering with water connections. There are three databases⁸ which provide further data for water and waste bylaws. It has been indicated by water and waste officers that all data will be in one source within one to two years.

Enforcement activity and staff observations

41. Staff observations should be recorded consistently in the Service Request System. Council staff⁹ need to ensure that they are reporting new nuisances and complaints by the public to the Council Call Centre instead of individual, group, team or unit databases. Information around the need for staff to report formally, nuisances or complaints by the public, and to conclude investigations, shall be sent to the relevant unit managers to inform the relevant staff.
42. Officers need to, upon completion of an investigation or even if the investigation is stalled, alert the Call Centre of relevant information (for example, whether any other issues arose from the investigation or whether there was an actual issue to deal with or whether and how the issue was handled etc). This should allow the Call Centre to confirm the outcome of the investigation to customers and to provide useful data for the next bylaw reviews. There is a need to improve consistency.

⁶ The Council currently uses the GEMS and Worksmart software applications to manage core components of business including Requests for Service. The GEMS/Worksmart software is now at 'end of life' and the Council is planning to migrate the functions within GEMS/Worksmart into a new solution.

⁷ Cleanfill licensing, trade waste, water-related, waste management and licensed waste handling.

⁸ Transfer stations, Kate Valley operations, and cleanfill operations.

⁹ Including Park Rangers, Parking Wardens, Animal Control Officers and Enforcement Officers.

4 Cont'd

43. Organisations contracted by the Council should be made aware of the importance of reporting nuisances or potential issues formally by the relevant bylaw owning group who contract services out. These organisations, such as Armourguard¹⁰ or City Care, have the potential to supply the Council with useful data, for example, the amount of broken glass found and other 'eyes on the street' information.

Residents survey

44. There could be better use made of the Residents Survey for data collection for the bylaws and their reviews. However, this will always only provide a general picture of a nuisance(s). Any indications of a new or identified nuisance may need to be followed up by the owners of the bylaw(s) through the examination of other sources of information.

Specific research

45. Specific research tailored to meet the needs of individual bylaws may be a productive means of gaining a more detailed view of perceived, identified or 'new' issues. This could, depending on resources available, include a survey approach by officers, which could occur whereby officers are:

- (a) Checking compliance with the bylaw.
- (b) Checking the quantity and nature of an offence.

There could be the opportunity to use campaigns to ascertain whether a nuisance is more perceived than real or otherwise, for bylaw matters. The Inspections and Enforcement Unit currently undertake campaigns around the city to determine whether there is adherence to some bylaws. For example, in August/September 2007, the Unit undertook a campaign in relation to footpath signage in the inner city that breached the Public Places and Signs Bylaw 2003.¹¹ This is a form of data collection that should contribute to the bylaw-making process.

46. Not all bylaws will be able to utilise data solely from the Service Request System. There are other sources of data which may need to be investigated. For example, the review of the Marine and River Facilities Bylaw lacked data concerning the weight that Council-owned marine and river structures, such as wharves and jetties, could hold. The key argument that the bylaw was needed to protect the integrity of the structures lacked support without a structural engineer's report on each structure. The time constraints placed on the bylaw review process meant that there was not time to obtain structural engineers' reports. During the next review of this bylaw, there will be a need to establish the structural integrity of the Council owned or managed marine and river facilities.
47. It is important for the staff responsible for bylaw(s) to give consideration to 'new' issues which emerge through the Service Request System. If research unearths evidence to support the theory that a nuisance is actual then the new nuisance may need to be tested through the requirements of section 155 in the LGA 2002.

Conclusion

48. A number of improvements have been made, or are currently underway, to data collection systems to provide the necessary information for future bylaw reviews. These are summarised in **Attachment One**. The owners of the bylaw(s) have ultimate responsibility for their bylaws and for ensuring relevant data is collected for each bylaw review. To assist this task, Strategy and Planning Group staff will carry out a regular review and analysis of Service Request System data for all bylaws on behalf of the groups that are responsible for the bylaws. It is the owning Group that will be responsible to the Regulatory and Planning Committee through the development and presentation of an annual report on the monitoring of each bylaw's operation and any emerging issues.

¹⁰ For example, contracted for after hours noise control.

¹¹ 514 business premises were checked and 130 premises were initially found to be in breach of the bylaw as a result of those businesses having more than one footpath sign contrary to the Council's Policy for Signboards in Public Places.

5. GAMBLING VENUE POLICY REVIEW 2009 WORKING PARTY REPORT

General Manager responsible:	General Manager Strategy and Planning, DDI 941 8281
Officer responsible:	Programme Manager Strong Communities
Author:	Siobhan Storey Senior Policy Analyst

PURPOSE OF REPORT

1. The purpose of this report is to provide the Regulatory and Planning Committee with an account of the work undertaken by the Gambling Venue Policy Review 2009 Working Party in its review of the Christchurch City Council's Gambling Venue Policy and to provide recommendations regarding the policy for the next three years.

EXECUTIVE SUMMARY

2. The Gambling Venue Policy Review 2009 Working Party (the Working Party) was formed by the Regulatory and Planning Committee at its meeting of 2 February 2009. The Terms of Reference of the Working Party were:

To work with staff to carry out the initial review of the Gambling Venue Policy and make recommendations to the Regulatory and Planning Committee.

The Working Party met three times: 22 April 2009, 7 May 2009 and 12 June 2009. The Working Party was provided with considerable material to assist its deliberations.

This included a detailed background information paper (**Attachment 1**) on the following:

- The Gambling Act 2003
- The Role of Territorial Authorities
- Gambling Harm Prevention and Minimisation
- Return of Funds to the Community
- History of Gambling in New Zealand
- History of Current Council Policy, and
- The Current Christchurch City Council Gambling Venue and Totalisator Agency Board (TAB) Venue Policy.

The paper also included a number of appendices including:

- Department of Internal Affairs: Gambling Fact Sheet 6, and
- Summary of Changes in Territorial Authorities' Gambling Venue Policies.

3. In addition the Social Impact Assessment prepared by staff and the Economic Impact Assessment prepared by Covec Ltd were provided to the Working Party. Summaries of these assessments are attached as **Attachments 2 and 3**. There was also information that major stakeholders provided in discussions with staff (**Attachment 4**).
4. The Christchurch City Council's current class 4 Gambling Venue Policy is a "sinking lid" policy, and its purpose is to prevent any increase in the numbers of gambling venues or machine numbers in the city. The salient paragraphs are given below. (The full policy is provided in the final section of Attachment 1.)

Class 4 Gaming

1. *The Christchurch City Council will not grant consent under section 98 of the Gambling Act 2003 to allow any increase in class 4 gaming venues or class 4 machine numbers except in the circumstance set out below.*
2. *The Christchurch City Council will grant a consent where two or more corporate societies are merging and require Ministerial approval to operate up to the statutory limit in accordance with section 95 (4) of the Gambling Act 2003. The total number of machines that may operate at the venue must not exceed 18 machines.*

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5. At its final meeting, the Working Party was presented with a number of options that could potentially be combined in various different ways to become policy. These are:

- (i) Maintain the status quo.
- (ii) Replace the sinking lid policy with a cap on venues and numbers at the present levels, allowing the relocation of machines if a venue closes or relocates.
- (iii) Amend Clause 2 of the status quo to accommodate section 96 consent applications of the Gambling Act 2003 as suggested by Alastair Sherriff in his legal opinion of 3 October 2007 (page 8):

*"2. The Christchurch City Council will grant a consent for up to 18 machines where two or more corporate societies are merging and require Ministerial approval to operate in accordance with section 95(4) of the Gambling Act 2003. The Christchurch City Council will grant a consent for up to 18 machines pursuant to section 98(c) and 100 of the Gambling Act 2003 to a corporate society which is a club which requires Ministerial approval to operate more than 9 gaming machines in accordance with section 96 of the gambling Act 2003. The total number of machines that may operate at the venue, whether section 95 or 96 applies, **must not exceed 18 machines.**"*

- (iv) Have no restrictions on either the numbers of venues or machines apart from the legislated number.
- (v) Replace the sinking lid policy with area-specific caps on venues and machine numbers.
- (vi) Allow the numbers of machines under mergers to be 30.

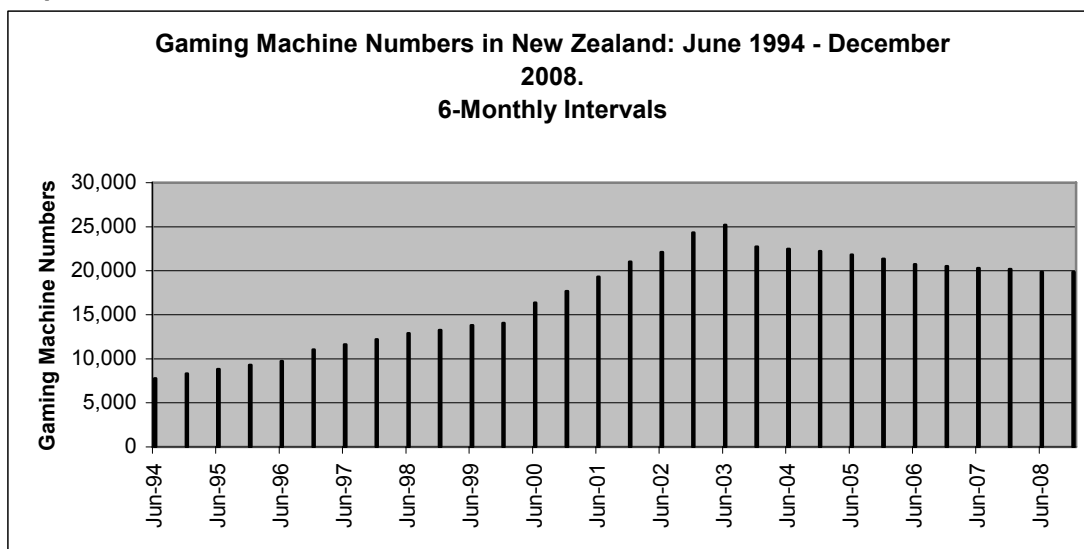
The Working Party considered all these options and discussed (i) and (ii) in some detail. Options (i), (ii) (iii) and (iv) are the main options and these are considered in more detail in the Background section of this report.

6. Key pieces of information that led the Working Party to limit its deliberations to these two options are:

- (a) At 31 December 2008 Christchurch had the greatest number of venues and of machines of any of the major centres. This translates into Christchurch having the highest rate of venues and of machines per thousand population aged 15 and over of the major centres, namely Auckland, Hamilton, Wellington and Christchurch, and of all cities except Dunedin.
- (b) Since 1978 there has been a proliferation of different forms of gambling in New Zealand with the most significant increase being through the introduction of gaming machines in clubs, hotels and bowling alleys. Following the introduction of the Gambling Act, nationally the numbers of societies, venues and gaming machines have consistently dropped, and the same is true for Christchurch. However this decline has happened more slowly relative to the rate of growth of numbers of gaming machines before the introduction of the Act as can be seen in Graph 1 below:

5 Cont'd

Graph 1



Source: Department of Internal Affairs

- (c) The funding of charitable organisations through gambling is considered a redistribution of wealth from a sector of society with low socioeconomic status (gamblers) to the wider population through the distribution of grants.¹²
7. The Working Party debated the possibility of amending the current policy to allow the relocation of machines if a business changes location, as members considered this could be advantageous from a business perspective. However they felt that this argument was not compelling enough to make any change to the current policy. Consequently this report recommends retaining the existing policy.
 8. The Working Party also considered the necessity of undertaking a special consultative procedure as described under section 83 of the Local Government Act (2002) if the current policy were to be retained unchanged. A legal opinion on this matter was sought.
 9. As discussed under Legal Considerations below, the legal opinion states that if the current policy were to be retained unchanged, the Council is not required to undertake a special consultative procedure under the Gambling Act 2003. On the grounds that consultation has already taken place as part of the review process; that a strong preference was expressed through consultation on the previous review; and on the view that the decision to retain the current policy is not significant, there may be no necessity to carry out further consultation.

FINANCIAL IMPLICATIONS

10. If the Council accepts the recommendation not to carry out a special consultative procedure there will be some savings in terms of staff time and other costs (such as printing and advertising).

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

11. Yes. Budgets to review this policy are sourced from the City and Community Long-Term Policy and Planning Activity in the 2009-2019 LTCCP.

¹² Covec. 2009. *The Economic Impacts of NCGMs on Christchurch City. A Report prepared for the Christchurch City Council.*

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LEGAL CONSIDERATIONS

12. Section 102(5) of the Gambling Act 2003 provides that councils must complete a review of a policy on class 4 gambling venues within three years after the policy is adopted, and then within three years after that review and each subsequent review is completed. Section 102(2) of the Gambling Act 2003 provides that a Gambling Venue Policy may be amended or replaced only in accordance with the special consultative procedure provided in Section 83 of the Local Government Act 2002 (LGA02).
13. The decision in this report is whether, as a result of the review of the Council's Gambling Policy, or the Policy should be amended, or whether to continue it without amendment. The discussion of the matters that need to be considered in respect of that decision is considered in the rest of this report (in particular see the "Assessment of Options" section).
14. If the Council decision is that the Policy should be amended (or replaced) then the Gambling Act 2003 clearly requires that the special consultative procedure (SCP) be used.
15. If the decision is to continue the Policy without amendment the Gambling Act does not require an SCP process to be used. The Council may reach a decision that the Gambling Policy continue for another three years in its current form without any public process so the Working Party recommendation is that the policy be continued without amendment and therefore without the SCP.

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

16. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

17. In the 2009-2019 LTCCP's Communities Outcomes section it is noted that "The Council works with a wide range of community groups and other agencies so it can achieve our community outcomes." (page 57).

Relevant Community Outcomes include:

- (a) A Prosperous City: We have a strong economy that is based on a range of successful and innovative businesses. Christchurch has a strong, healthy economy.
- (b) A Healthy City: We live long, healthy and happy lives. Our city environment supports the health of the community.

18. The Activity Management Plans used to build up the LTCCP each include Strategic Directions (i.e. the Council's strategic intent in relation to the activity). The Review of the Gambling Venues Policy is consistent with part of the Strategic Directions for the City and Community Long-Term Policy and Planning Activity Management Plan, as follows:

Develop strategies, policies and plans that:

- Support the achievement of the Council's long-term vision and contribute to achieving Community Outcomes
- Respond to emerging City issues.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

19. N/A

5 Cont'd

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

20. No, there is no directly relevant strategy. The legislation requires the Council to review the Gambling Venue Policy every three years.

CONSULTATION FULFILMENT

21. Major stakeholders were consulted and they provided information in these discussions with staff (see Attachment 4).
22. When the Council reviewed its policy in 2006 it undertook a special consultative procedure. The Council received a total of 2,062 submissions, with 138 groups/organisations or individuals requesting to make a verbal submission to a Council hearing panel. Of the former, 2,030 of submitters (98 per cent) indicated they did not support the proposed changes to the Gambling Venue and TAB Policy. Of these, 1,923 (95 per cent) said they would prefer to retain the current policy.
23. It is the view of the Working Party that the situation has not changed significantly since 2006 and that the consultation carried out then and the recent consultation with key stakeholders provides sufficient understanding of the views of interested and affected parties.

GAMBLING VENUE POLICY REVIEW 2009 WORKING PARTY RECOMMENDATION

That the Regulatory and Planning Committee recommend to Council that it resolves:

- (a) To accept this report as its review under section 102(5) of the Gambling Act 2003.
- (b) To retain, without amendment, the current Gambling Venue Policy of 2006 as the Gambling Venue Policy 2009, as a result of the Gambling Venue Policy Review 2009 Working Party review.
- (c) Not to undertake a special consultative procedure, or any further consultation, in respect of recommendation (b), on the basis that the Gambling Act 2003 does not require that the special consultative procedure be used, and that the consultation that has taken place in the process to date, together with the very clear expression of community views in the last policy review of 2006, provides the Council with sufficient understanding of public views on this matter.

BACKGROUND (THE ISSUES)

24. Gambling has both benefits and costs, or harms. Benefits of class 4 gambling accrue to the individual from the fun and entertainment people derive from playing on the gaming machines and to the community as a whole from the return of profits either as grants to community organisations through the various Trusts which own the machines, or to benefits provided to members of Chartered Clubs.
25. However these benefits are offset to a greater or lesser extent by the harms gambling causes either to the individual who has a gambling problem and their family/whanau and associates, or to the wider community through crime and dishonesty occurring related to gambling.
26. These issues are explored in greater detail in the Social and Economic Impact Assessments, summaries of which are provided as **Attachments 2 and 3**.
27. As Table 1 shows, at 31 December 2008 Christchurch had the greatest number of both venues and machines of any of the major centres. This translates into Christchurch having the highest rate of venues and machines per thousand population aged 15 and over of all major cities except Dunedin, as Table 2 shows.

Table 1

City	As at 31 December 2008		National % of machines
	Number of venues	Number of machines	
Auckland	121	1,579	7.94%
Christchurch	124	1,896	9.54%
Dunedin	52	631	3.17%
Hamilton	37	558	2.81%
Manukau	70	1,010	5.08%
North Shore	46	651	3.27%
Waitakere	35	477	2.40%
Wellington	54	787	3.96%
Total	1,537	19,879	

Source: Department of Internal Affairs

Table 2

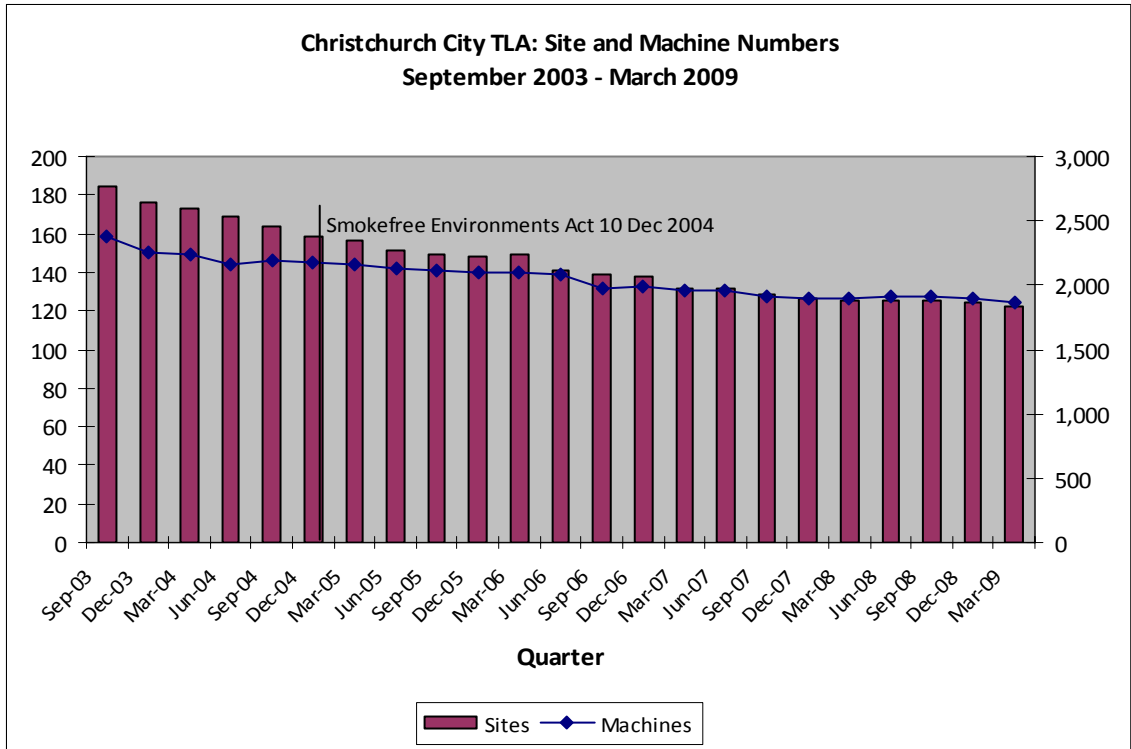
City	Population aged 15 and over (2006 Census)	As at 31 December 2008	
		Venues per thousand population aged 15 and over	Machines per thousand population aged 15 and over
Auckland	328,560	0.37	4.81
Christchurch	282,762	0.44	6.71
Dunedin	98,709	0.53	6.39
Hamilton	100,995	0.37	5.53
Manukau	242,631	0.29	4.16
North Shore	164,838	0.28	3.95
Waitakere	142,284	0.25	3.35
Wellington	147,690	0.37	5.33
Total	3,160,371	0.49	6.29

Source: Department of Internal Affairs

5 Cont'd

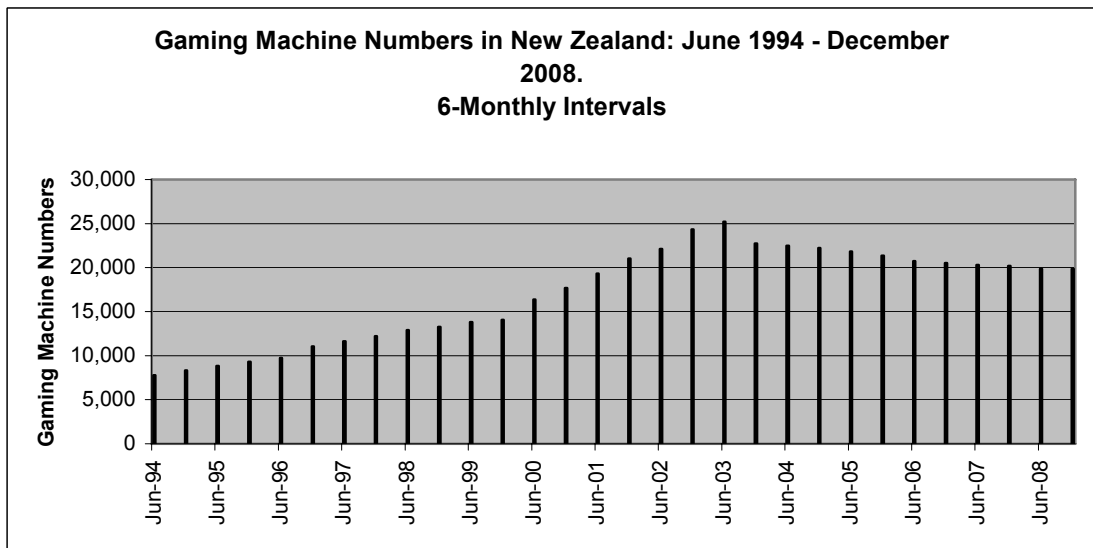
28. Since the introduction of the Gambling Act numbers of societies, venues and gaming machines have consistently dropped nationally, and the same is true for Christchurch as Graph 2 shows. However this decline has happened more slowly relative to the rate of growth before the introduction of the Act, as shown in Graph 3 below.

Graph 2



Source: Department of Internal Affairs

Graph 3



Source: Department of Internal Affairs

5 Cont'd

Economic impacts of gaming machines

29. As part of their report,¹³ Covec estimated the net economic impacts of gaming machines on the Christchurch economy. First they estimated gross impacts. Then they estimated the impacts of foregone expenditures and subtracted them from gross gaming machine impacts to calculate net impacts. They found these net impacts to be:

- Lost output of \$13 million
- Additional GDP of \$2 million;
- Lost employment for 630 full-time equivalents, and
- Lost household income of \$8 million.

Hence, the impact of gaming machines is largely negative; however these impacts are small compared with the size of the Christchurch economy.

30. There is no statistical relationship between the number of gaming machines and player expenditure. In other words, changes in the number of machines appears to have no material impact on expenditure.
31. Considering the wider costs and benefits of gaming and the subsequent funding of charitable organisations, the latter is a redistribution of wealth from a sector of society with low socioeconomic status (the gamblers) to the wider population through the distribution of grants.¹⁴ This exacerbates income inequalities.

Decisions which are not in keeping with the current policy

32. Council has made two decisions regarding the issue of licences which are not in keeping with the current policy, one relating to the Christchurch Working Men's Club, the other relating to the Sumner-Redcliffs RSA.

33. The Council discussed the deferred application by the Christchurch Working Men's Club for Territorial Authority consent under the Gambling Act 2003 at its meeting of 4 October 2007. The Council made a number of resolutions regarding this discussion; these are attached as **Attachment 5**. In particular the Council recognised that:

1. *(e)....."an anomaly has been identified in the current Council policy in that it makes no allowance for consents to be given for section 96 Ministerial approvals whilst permitting consents to be given for section 95 Ministerial approvals.*
2. *That the Council identifies that the reasons for the inconsistency in the current policy have arisen because the Council did not consider section 96 consent situations when making provision for section 95 consent situations either in 2004 or in 2006 for purposes of a S96 application by the Club for Ministerial approval.*
3. *That this matter be included as part of Council's submission on the Gambling Act."*

34. The Working Party discussed this decision and the rationale behind it, outlined in paragraph 33.2 above. The Working Party considered that the confluence of circumstances of the Christchurch Working Men's Club was exceptional. It is unlikely to reoccur because the possibility of future applications under section 96 has now been considered. No future application would be granted because any such application would increase the number of machines in the city, which would directly contravene the current policy.

¹³ Covec. 2009. *The Economic Impacts of NCGMs on Christchurch City. A Report prepared for the Christchurch City Council.*

¹⁴ *Ibid* p21

5 Cont'd

35. The Sumner-Redcliffs RSA applied for territorial authority consent from the Council in December 2005 for four gaming machines, and it was granted by Council staff in January 2006. However, Council staff did not realise that in December 2005 the RSA's gambling licence from the Department of Internal Affairs (DIA) had been surrendered for more than 6 months. This meant that in accordance with the Council's Gambling Policy applicable at that time, the consent should not have been granted.
36. At its meeting of 19 December 2008, the Council carried a motion whereby the Sumner-Redcliffs RSA (Inc) be granted a territorial authority consent under section 98(c) of the Gambling Act 2003 to operate four gaming machines from its premises at 34 Wakefield Avenue, Sumner, Christchurch. The motion included further resolutions so the Council's decision complies with section 80 of the Local Government Act 2003. The full wording of the motion is attached as **Attachment 6**.
37. The Working Party discussed this decision and the rationale behind it. In its report to the Council, the Regulatory and Planning Committee noted that a review of the other consents issued by the Council under section 98(d) of the Gambling Act 2003 had been carried out and found there was only one other consent that the Council had issued in respect of a club (besides the Sumner-Redcliffs RSA and Christchurch Working Men's Club consents). That was for the Hoon Hay Club (consent was granted in January 2005) which subsequently ceased operation. All the other consents were issued in respect of licensed premises which were not clubs, and were all issued in 2004.
38. Hence the Committee concluded that the same type of situation, where the Council granted consent to a club under its former Gambling Policy, and it may have been under the wrong provision of the Gambling Act, giving rise to problems for the club with DIA, cannot occur again. Since November 2006, the new policy has been in force and it does not provide for the Council to grant any consents except where there is a merger of clubs under section 95, so there should also not be any similar problems arising in relation to the current Gambling Policy.
39. In summary, neither of these situations is likely to reoccur, therefore there is no need to make any changes to the current policy. The Working Party further noted that if similar requests were to be made in the future, the Council should apply the policy as it stands and not make exceptions.

THE OBJECTIVES

40. To comply with the Gambling Act 2003, to consider the costs and benefits of non-casino gaming machine gambling, and to arrive at an appropriate policy regarding the licensing of new venues.

THE OPTIONS

41. There are a number of options that could potentially be combined in various different ways to become policy. These are:
 - (i) Maintain the status quo.
 - (ii) Replace the sinking lid policy with a cap on venues and numbers at the present levels, allowing the relocation of machines if a venue closes or relocates.
 - (iii) Amend Clause 2 of the status quo to accommodate section 96 consent applications of the Gambling Act 2003 as suggested by Alastair Sherriff in his legal opinion of 3 October 2007 (page 8):

*"2. The Christchurch City Council will grant a consent for up to 18 machines where two or more corporate societies are merging and require Ministerial approval to operate in accordance with section 95(4) of the Gambling Act 2003. The Christchurch City Council will grant a consent for up to 18 machines pursuant to section 98(c) and 100 of the Gambling Act 2003 to a corporate society which is a club which requires Ministerial approval to operate more than 9 gaming machines in accordance with section 96 of the gambling Act 2003. The total number of machines that may operate at the venue, whether section 95 or 96 applies, **must not exceed 18 machines.**"*

5 Cont'd

- (iv) Have no restrictions on either the numbers of venues or machines apart from the legislated number.
- (v) Replace the sinking lid policy with area-specific caps on venues and machine numbers.
- (vi) Allow the numbers of machines under mergers to be 30.

Options (i), (ii), (iii), and (iv) are the main options and have been considered further below.

THE PREFERRED OPTION

- 42. Option (i) - Maintain the status quo.

5 Cont'd

ASSESSMENT OF OPTIONS**The Preferred Option****Maintain the status quo – Option (i)**

43. It has been argued by some stakeholders that maintaining the status quo may limit the growth in funds available for authorised purposes. However there is no substantive evidence that there is a causative link between the number of venues and the levels of funding.
44. The results of a recent Ministry of Health report¹⁵ “suggest that living in a neighbourhood closer to a gambling venue increased the odds that a person (a) had gambled at a gambling venue, and (b) was a problem gambler. Furthermore, people who had more gambling venues within five kilometres of their neighbourhood centre may have been more likely to have gambled at a gambling venue in the past year.” Thus restricting growth in the number of venues may help prevent any increase in gambling related harm.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> • Fulfils one of the purposes of the Act in restricting the growth of gambling opportunities • Restricting growth in the number of venues and machines may prevent any increase in gambling related harm 	<ul style="list-style-type: none"> • May limit growth in funds raised for approved purposes
Cultural	<ul style="list-style-type: none"> • May limit risk of problem gambling occurrence 	<ul style="list-style-type: none"> • May reduce the number of venues able to be attended for such activities
Environmental	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • N/A
Economic	<ul style="list-style-type: none"> • EIA found the impact of gaming machines is largely negative but noted these effects are very small, indeed almost negligible, compared with the overall Christchurch economy 	<ul style="list-style-type: none"> • Possible decline in number of venues may discriminate between new operators and existing ones

Extent to which community outcomes are achieved:

Maintaining the status quo would contribute to a safer, healthier city as it mitigates gambling harm. It would allow for gambling as a recreational leisure activity.

Impact on the Council's capacity and responsibilities:

Limited impact as no need to issue new consents

Effects on Māori:

Supported by Mahaanui Kurataiao and He Oranga Pounamu. Māori are significantly affected by gambling related harm yet receive very few of the perceived benefits from gambling. Maintaining the status quo could reduce the negative effects on Māori.

Consistency with existing Council policies:

N/A

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

The views of the public were sought in 2006 and a majority favoured retaining the status quo at that time.

Key stakeholders were consulted in the current review process. Broadly, those stakeholders that operate non-casino gaming machines (NCGMs) preferred a policy that allowed the transfer of machines to new venues. Those involved in addressing or treating problem gambling or in public health preferred the status quo.

¹⁵ Ministry of Health. 2008. *Raising the Odds? Gambling behaviour and neighbourhood access to gambling venues in New Zealand*. Wellington: Ministry of Health

5 Cont'd

Option (ii)

45. Replace the sinking lid policy with a cap on venues and numbers at the present levels, allowing the relocation of machines if a venue closes or relocates.

	Benefits (current and future)	Costs (current and future)
Social	By allowing the transfer of machines to higher use venues it would increase the funds available for community organisations	<ul style="list-style-type: none"> • Could slow or stop the reduction in the number of venues and machines and hence adversely affect problem gambling • Allowing the transfer of machines from venues where usage is low to venues where usage is higher may increase problem gambling
Cultural	<ul style="list-style-type: none"> • Venues able to be spread through various areas of the city 	<ul style="list-style-type: none"> • May not fulfil the purpose of the Act to control the growth of gambling
Environmental	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • N/A
Economic	<ul style="list-style-type: none"> • This amendment could be of assistance to some businesses 	<ul style="list-style-type: none"> • May be disadvantageous to some businesses by increasing competition with these • EIA found the impact of gaming machines is largely negative but noted these effects are very small, indeed almost negligible, compared with the overall Christchurch economy
<p>Extent to which community outcomes are achieved:</p> <p>Could possibly enhance business activity and hence contribute to a more prosperous city, although gaming machines have minimal impacts on the overall economy. It would allow for gambling as a recreational leisure activity. However it may have negative health and safety effects</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Limited, though Council would have to consider and issue consents</p> <p>Effects on Māori:</p> <p>Current policy supported by Mahaanui Kurataiao and He Oranga Pounamu. Māori are significantly affected by gambling related harm yet receive very few of the perceived benefits from gambling. Any increase in opportunities for gambling would increase the negative effects on Māori.</p> <p>Consistency with existing Council policies:</p> <p>N/A</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>The views of the public were sought in 2006 and a majority favoured retaining the status quo at that time. Key stakeholders were consulted in the current review process. Broadly, those stakeholders that operate NCGMs preferred a policy that allowed the transfer of machines to new venues. Those involved in addressing or treating problem gambling or in public health preferred the status quo.</p>		

5 Cont'd

Option (iii)

46. Amend the status quo to accommodate section 96 consent applications of the Gambling Act 2003 as suggested by Alastair Sherriff in his legal opinion of 3 October 2007 (page 8):

"2. *The Christchurch City Council will grant a consent for up to 18 machines where two or more corporate societies are merging and require Ministerial approval to operate in accordance with section 95(4) of the Gambling Act 2003. The Christchurch City Council will grant a consent for up to 18 machines pursuant to section 98(c) and 100 of the Gambling Act 2003 to a corporate society which is a club which requires Ministerial approval to operate more than 9 gaming machines in accordance with section 96 of the Gambling Act 2003. The total number of machines that may operate at the venue, whether section 95 or 96 applies, must not exceed 18 machines.*"

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> If numbers of machines were to increase this option fulfils the perception that community funding will increase but there is little evidence to support this 	<ul style="list-style-type: none"> Does not reflect wider community views as to restrictions sought through the previous consultation process Could possibly lead to an increase in machines and hence increase social problems through problem gambling
Cultural		<ul style="list-style-type: none"> May not fulfil the purpose of the Act to control the growth of gambling
Environmental	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A
Economic	<ul style="list-style-type: none"> This amendment could be of assistance to some businesses 	<ul style="list-style-type: none"> EIA found the impact of gaming machines is largely negative but noted these effects are very small, indeed almost negligible, compared with the overall Christchurch economy
<p>Extent to which community outcomes are achieved:</p> <p>Could possibly enhance business activity and hence contribute to a more prosperous city, although gaming machines have minimal impacts on the overall economy. It would allow for gambling as a recreational leisure activity. However it may have negative health and safety effects</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Limited, though Council would have to consider and issue consents</p> <p>Effects on Māori:</p> <p>Current policy supported by Mahaanui Kurataiao and He Oranga Pounamu. Māori are significantly affected by gambling related harm yet receive very few of the perceived benefits from gambling. Any increase in opportunities for gambling would increase the negative effects on Māori</p> <p>Consistency with existing Council policies:</p> <p>N/A</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Possible support from Trusts and Chartered Clubs. Probable concerns from public health organisations and problem gambling groups. Broadly, those stakeholders that operate NCGMs preferred a policy that allowed the transfer of machines to new venues. Those involved in addressing or treating problem gambling or in public health preferred the status quo.</p>		

5 Cont'd

Option (iv)

47. Have no restrictions on either the numbers of venues or machines apart from the legislated number.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> If numbers of venues were to increase this option fulfils the perception that community funding will increase but there is little evidence to support this 	<ul style="list-style-type: none"> Does not reflect wider community view as to restrictions sought through the previous consultation process. May increase social problems through problem gambling
Cultural	<ul style="list-style-type: none"> Venues able to be spread through various areas of the city. Market driven selection 	<ul style="list-style-type: none"> Inconsistent with the idea that gaming machine availability should be controlled May not fulfil the purpose of the Act to control the growth of gambling
Environmental	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A
Economic	<ul style="list-style-type: none"> Provides opportunity for venues to obtain further income from servicing machines The market would determine the distribution and number of venues Provides a level playing field for competition 	<ul style="list-style-type: none"> EIA found the impact of gaming machines is largely negative but noted these effects are very small, indeed almost negligible, compared with the overall Christchurch economy May increase costs of treatment of problem gambling May result in increased economic costs to individuals affected by problem gambling and their families May result in further redistribution of wealth from lower socioeconomic groups to the wider community
<p>Extent to which community outcomes are achieved:</p> <p>It would allow for gambling as a recreational leisure activity. However it may have negative health and safety effects.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Limited, though Council would have to consider and issue consents</p> <p>Effects on Māori:</p> <p>Current policy supported by Mahaanui Kurataiao and He Oranga Pounamu. Māori are significantly affected by gambling related harm yet receive very few of the perceived benefits from gambling. Any increase in opportunities for gambling would increase the negative effects on Māori.</p> <p>Consistency with existing Council policies:</p> <p>N/A</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Possible support from Trusts and Chartered Clubs. Probable concerns from public health organisations and problem gambling groups. Broadly, those stakeholders that operate NCGMs preferred a policy that allowed the transfer of machines to new venues. Those involved in addressing or treating problem gambling or in public health preferred the status quo.</p>		

6. CHRISTCHURCH TRANSPORT PLAN

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Programme Manager Liveable City
Author:	Carolyn Ingles

PURPOSE OF REPORT

1. The purpose of this report is to establish a process with the Regulatory and Planning Committee to provide advice and input into the development of the Christchurch Transport Plan.

EXECUTIVE SUMMARY

2. Staff have begun the process of developing an integrated transport plan for the City. The Christchurch Transport Plan (the Plan) will update the Council's transport policy as it relates to recent strategic directions taken by the Greater Christchurch Urban Development Strategy Implementation Committee (UDS), the Central City Revitalisation Strategy, the Regional Land Transport Strategy, and the New Zealand Transport Strategy. The Plan will amalgamate a number of existing Council policies relating to transport. The Plan will set the Council's transport vision, objectives and priority actions; the document is proposed to be three volumes:

- (a) Volume 1: Context, vision, objectives, targets, issues, mode and spatial chapters
- (b) Volume 2: Prioritisation methodology
- (c) Volume 3: Implementation plan, funding and monitoring.

Ultimately, the Plan will inform and provide strategic input into future funding decisions as made through future LTCCP's and the Regional Land Transport Programme.

3. Early input and advice is desired to ensure that the Christchurch Transport Plan is developed in a manner consistent with Councillor expectations and aspirations. It is proposed that the Regulatory and Planning Committee would provide feedback for staff in the development of the Plan. The Committee would also provide a vehicle for information sharing between Councillors and staff. It is proposed that a series of workshops are held, utilising the existing Committee workshop schedule, in the following timeframe and topics:

- August - Background and Issues, Context (for example RLTS).
- September - Objectives, targets – (what, why, how and by when).
- November - Review of chapter summaries. How each mode proposes to contribute to targets/objectives.
- February - Spatial chapters presented.
- April - Prioritisation methodology reviewed.
- June - Outputs of prioritisation considered.

The Christchurch Transport Plan is to be completed by June 2010 to facilitate an update of the Regional Land Transport Programme.

FINANCIAL IMPLICATIONS

4. There are no financial implications in establishing this process with the Committee.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

5. Yes, funding for the development of the Christchurch Transport Plan is budgeted for within the 2009-19 LTCCP.

LEGAL CONSIDERATIONS

6. There are no legal implications resulting from establishing this process. Any legal implications of the Christchurch Transport Plan will be addressed as part of this plan development process.

6 Cont'd

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

7. Yes.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

8. Yes, this activity aligns with the "City planning and development" activity.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

9. Yes. In the "City planning and development" activity there is the following level of service:

The Council approves a work programme, based on the approved UDS Action Plan, by 30 June for the following financial year.

This level of service will largely comprise of developing policy and plans to implement the Council's components of the Greater Christchurch Urban Development Strategy (UDS) action plan. The focus of work for 2009/10 to 2011/12 will be on:

- Supporting regional policy and planning processes
- Central city revitalisation
- Intensification and centres planning
- Greenfield (area) planning
- Transport planning.

ALIGNMENT WITH STRATEGIES

10. Development of the Christchurch Transport Plan aligns with the intent of the Greater Christchurch Urban Development Strategy, the Central City Revitalisation Strategy, the Regional Land Transport Strategy and the New Zealand Transport Strategy.

Do the recommendations align with the Council's strategies?

11. Yes, see above.

CONSULTATION FULFILMENT

12. There is no consultation requirement to establish this process.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee:

- (a) Receive the report outlining the process for the development of the Christchurch Transport Plan.
- (b) Adopt the proposed programme as the basis for Committee input into the Christchurch Transport Plan development.

7. DELEGATION OF THE POWER TO APPOINT INSPECTORS UNDER THE SALE OF LIQUOR ACT 1989

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Legal Services Manager
Author:	Judith Cheyne, Solicitor, Legal Services Unit

PURPOSE OF REPORT

1. The purpose of this report is for the Regulatory and Planning Committee to recommend the Council to delegate the power to appoint inspectors under the Sale of Liquor Act 1989 (SOLA) to the Chief Executive.

EXECUTIVE SUMMARY

2. At present the Council Hearings Panel has a delegation from the Council of its District Licensing Agency (DLA) function to appoint inspectors under section 103 of SOLA. While the Council Hearings Panel also has powers of sub-delegation and can delegate to the Secretary or any subcommittee, it can only sub-delegate any of the Council Hearings Panel's powers that "*relate to any matter that is the subject of an application to which no objections have been received*". The power to appoint inspectors is not something that relates to such an application.
3. This means for a delegation of this power to be given to anyone else, it must be given by the Council. The legal considerations section below outlines the power of the Council to make such a delegation.
4. The Liquor Licensing team seeks that such a delegation be made because it is something of an anomaly that what is essentially an employment matter also comes within the powers of the Council Hearings Panel. The Unit Manager is usually the one who makes the decision to employ someone to carry out the role of a Licensing Inspector. As with all appointments, referee checks and Ministry of Justice checks are carried out on preferred applicants prior to an offer of employment being made. With the current delegations, that manager may employ someone for the role, but they cannot appoint them as an inspector because formal approval for this is required from the Council Hearings Panel.
5. The risk related to this is that the Council Hearings Panel could potentially refuse to appoint this person even though the manager has already agreed to their employment as an inspector. Although the employment of the person could be made subject to the appointment as an inspector also being approved by the Hearings Panel, this simply adds another layer of unnecessary and time-consuming process.
6. This is also at odds with similar powers which are delegated to the Inspections and Enforcement Manager. The Manager is able to appoint and warrant Enforcement Officers, HSNO Officers, Dog Control Officers, Environmental Health Officers, Litter Control Officers and Litter Wardens, Bylaw Inspectors, Parking Wardens and other positions within the Council.
7. In this case it is recommended that the delegation to appoint inspectors under SOLA be given to the Chief Executive and then the Chief Executive will sub-delegate to the appropriate Manager. The delegation to the Council Hearings Panel should also be revoked.

FINANCIAL IMPLICATIONS

8. There are no financial implications arising from this decision.

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

9. The appointment of inspectors is an employment matter coming within the Inspections and Enforcement Unit Budget. The Liquor Licensing component of that budget is funded fully through the collection of Liquor Licensing fees, with the consequence that there is no rates component to that budget.

7 Cont'd

LEGAL CONSIDERATIONS

10. Under SOLA the Council is the District Licensing Agency (DLA) and the Chief Executive of the Council is the Secretary of the DLA (see sections 99 and 102).
11. Section 103 of SOLA provides that "*for the purposes of this Act, the District Licensing Agency shall appoint one or more inspectors*", who have the powers conferred on them under SOLA. The fact that a person is in the employment of the Council is not a bar to his or her appointment as an inspector under SOLA.
12. All three positions (DLA, Secretary and Inspectors) have certain powers that they can exercise under SOLA. The inspector's duties are largely to inquire into and file reports with the DLA on applications for new licences and managers' certificates, and on the renewal of managers' certificates. They also have the right to apply for the variation, suspension, or cancellation of licences and managers' certificates, and for orders restraining the continuing breach of any licence condition.
13. Section 104(1) of SOLA provides that a "*local authority may delegate to any committee appointed under clause 30 of Schedule 7 of the Local Government Act 2002 such of its powers, duties, and discretions under this Act as it considers necessary*".
14. Section 104(2) then provides that the "*committee to which any such powers, duties, or discretions have been delegated may, with the approval of the local authority, subdelegate to the Secretary or to any subcommittee such of those powers, duties, and discretions as relate to any matter that is the subject of an application to which no objections have been received.*" This is the exact wording of the power of sub-delegation given to the Council Hearings Panel. As noted above (paragraph 2) the power of appointment of inspectors is not directly relevant to powers exercised in relation to applications to which no objections have been received.
15. However, the Council can delegate the power of appointment under section 103 directly to someone other than a "committee" by relying on its powers under the Local Government Act 2002. Section 99(2) of SOLA specifies that "*except as otherwise provided in this Act, in exercising its powers as the District Licensing Agency a local authority shall be governed by the provisions of the Local Government Act 2002*".
16. The phrase "*except as otherwise provided in this Act*" does not appear to apply in this instance. If the power we were suggesting to be delegated related to "*any matter that is the subject of an application to which no objections have been received*" then it is likely that it would be considered something which the Act has already provided for. However, section 104 of the SOLA does not state that a local authority cannot delegate any of its other DLA powers to any other person or body: it simply provides that "it may" delegate such of its powers as it considers necessary to a committee appointed under the Local Government Act 2002.
17. As the Council is also to be governed by the Local Government Act 2002 in exercising its DLA powers (unless SOLA provides otherwise), staff consider that it can delegate the power to appoint inspectors under section 103 by applying clause 32(1) of Schedule 7 of the Local Government Act 2002. That clause provides that "*unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, **or member or officer of the local authority** any of its responsibilities, duties, or powers*" except certain matters, none of which relate to SOLA powers.

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

18. This is not a decision of high significance, and simply allows the power of appointment of inspectors to be dealt with more effectively and efficiently by the Council.

7 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. Not relevant.

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

20. Not relevant.

ALIGNMENT WITH STRATEGIES

21. Not relevant.

Do the recommendations align with the Council's strategies?

22. Not relevant.

CONSULTATION FULFILMENT

23. The Inspections and Enforcement Unit and Legal Services Unit have worked together on this report.

STAFF RECOMMENDATION

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

- (a) Delegate to the Chief Executive its power under section 103 of the Sale of Liquor Act 1989 to appoint one or more inspectors for the purposes of the Sale of Liquor Act 1989.
- (b) Revoke the delegation to the Council Hearings Panel to appoint inspectors under section 103.

8. INSPECTIONS AND ENFORCEMENT UNIT: PROSECUTION UPDATE

General Manager responsible:	General Manager Regulation and Democracy Services, DDI: 941-8462
Officer responsible:	Inspections and Enforcement Manager
Author:	Gary Lennan

PURPOSE OF REPORT

1. The purpose of this report is to advise the Council through the Regulatory and Planning Committee, of the recent outcome of a prosecution undertaken by the Council's Inspections and Enforcement Unit.
2. The report also seeks the Regulatory and Planning Committee to receive this report advising of the Council's successful conviction for illegal building work and breach of the City Plan.

EXECUTIVE SUMMARY

3. In late 2007, the defendant in this case, Mr Chou, applied for building consent for a garage/workshop and a two-bedroom sleep-out at 26 Karamu Street, Riccarton. During this process it was identified at the Project Information Memorandum (PIM) stage that the initially proposed work would require resource consent. The defendant then resubmitted plans along with a letter advising the Council that he did not intend to use the premises for commercial purposes and he would not carry out the work initially indicated on the plans to convert the garage into two separate rooms.
4. On this basis the plans were approved and a resource consent was not required. The building work was completed as required and a Code Compliance Certificate was issued.
5. In September 2008, the Council received anonymous information that further building work had been completed on the site.
6. A site inspection revealed a further room had been added for a kitchen between the consented buildings. A dividing wall had been added to the garage and new walls had been constructed in the sleep-out, turning the consented two bedrooms into four.
7. A workman who was in the process of lining the garage at the time of inspection was advised to stop work.
8. The defendant was interviewed by Council officers a few days later and admitted to deliberately deceiving the Council.
9. Charges were laid under Section 40 of the Building Act 2004 and Section 338 of the Resource Management Act (RMA) 2009 for building work without a consent and a breach of the City Plan.
10. The defendant entered a guilty plea at the first hearing, and at the time of sentencing the defendant had already obtained a demolition consent and restored the property to the originally consented plans.
11. In sentencing, Judge Borthwick took into account the various aggravating and mitigating factors including the defendant's ability to pay a fine. He was duly convicted and sentenced to pay \$5,000 for the Building Act offence and 75 hours community service for the RMA offence, he was also ordered to pay solicitor fees of \$113 on each charge and \$130 court costs.

FINANCIAL IMPLICATIONS

12. Enforcement activity is rate-payer funded, with legal and prosecution costs being met out of the Inspections and Enforcement Unit budget. Section 389 of the Building Act 2004 provides for the Council to receive 90 per cent of any fine imposed by the Court upon conviction (90 per cent of \$5,000 is \$4,500). Total legal costs for this prosecution amounted to \$6,170.95, so the net cost to the Council for the legal advice is \$1,670.95.

8 Cont'd

LEGAL CONSIDERATIONS

13. All prosecutions are approved by the Inspections and Enforcement Manager, after consideration of evidence available to substantiate the charge/s and the public interest factors justifying the intervention of the law. All approved prosecutions are then reviewed by Council legal staff prior to charges being laid.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. This investigation and subsequent prosecution aligns with the Council's Regulatory Services activities.

ALIGNMENT WITH STRATEGIES

15. Not applicable.

CONSULTATION FULFILMENT

16. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee receive this report for information.

9. PARKING ENFORCEMENT ISSUES ARISING FROM THE 2008 REVIEW OF THE TRAFFIC AND PARKING BYLAW

General Manager responsible:	General Manager Regulation and Democracy Services, DDI: 941-8462
Officer responsible:	Inspections and Enforcement Unit Manager
Author:	Clive Morris, Parking Administration Team Leader

PURPOSE OF REPORT

1. The purpose of this report is to update the Regulatory and Planning Committee following a Council resolution of 19 June 2008:
 - (a) Requesting staff to report back on a quarterly basis on the implementation and enforcement of the Traffic and Parking Bylaw 2008, including any requests for service.
 - (b) Requesting staff to review how adequate the Parking Enforcement current data collection system is in meeting the requirements to demonstrate nuisance issues when the Council reviews or considers making new bylaws. At the Regulatory and Planning Committee held on 2 March 2009, the Committee redirected that this be included in the report to the Regulatory and Planning Committee on 6 August 2009.
 - (c) Requesting staff to begin work on developing a Memorandum of Understanding with the New Zealand Police.

EXECUTIVE SUMMARY

Quarterly Report on the Implementation and Enforcement of the Traffic and Parking Bylaw:

2. This is the fourth quarterly report tendered to the Regulatory and Planning Committee for consideration. The timing of the quarterly reports will be as close to the months of October, January, April and July as the Regulatory and Planning Committee agenda allows. This report serves as the quarterly report for June 2009.
3. At the Regulatory and Planning Committee meeting of 2 March 2009, it was raised by the Committee that there was no data explaining where complaints were resolved informally in relation to complaints detailed in Part 5, of Appendix 1. An additional column titled "informally resolved" has been added to **Appendix 1**. Such resolutions include situations where compliance has been achieved after verbally speaking with the vehicle owner or where upon arrival at the scene there is no offence.
4. The attached schedule of complaints (see Appendix 1) details the number of complaints received and enforcement action taken in relation to Clauses 9, 10, 19, 20, 21, 22 and 23 of the Traffic and Parking Bylaw 2008 for the period 1 April 2009 to 30 June 2009.
5. In relation to clauses 9 and 10, the attached schedule identifies the areas/streets where a number of complaints have been received in the reporting period. **Appendix 2** details that for the 2008/09 year the most prevalent complaint (14 complaints) related to parking on the grass verge on the west side of Cranmer Square. As reported in the May quarterly report the Parks Contracts Manager (Transport and Greenspace) has now installed waratahs and tape to prevent vehicle access onto the grass verge. Parking wardens are monitoring this on a daily basis. The Parks Contracts Manager has advised that a number of options have been identified to permanently restrict vehicle access to these berms, however, for budget reasons, permanent barriers to restrict vehicle access to these areas are unlikely to be put in place this financial year (2009/10).
6. Unless signage is installed, clauses 9 and 10 of the new bylaw currently remain unenforceable as an offence. Signage is required to enforce clauses 9 and 10, pursuant to Traffic Control Devices Rule 2004.

9 Cont'd

7. The Parking Enforcement Team, however, is proactively enforcing parking on grass berms and verges through other means. This is achieved through installing and enforcing no-stopping signs in areas such as around Hagley Park on Riccarton Avenue and Moorhouse Avenue. No-stopping signage has also been erected in Travis Road and Northcote Road for the purposes of protecting grassed areas. Appendix 2 details the number of infringements issued for parking in these no-stopping areas, the total being 10 for 2008/09. Please note that any disparity between the number of complaints received and the number of infringements issued is either due to the offending vehicle no longer being present at the time the officer attends to the complaint, or because as there is no signage, the matter cannot be enforced.
8. The Committee should also note the draft amendment to the Land Transport Road User Rule (no. 61001/4), on which the Council made a submission. The New Zealand Transport Agency is proposing that the amendments is likely to come into effect in 2009/10. The rule includes a proposal for a new clause which will deal with parking of vehicles off the roadway. It will mean that people will be prohibited from parking on a grassed area or other cultivation forming part of a road that is within an urban traffic area, and the Council will only have to erect signs or markings if it wants to allow a person to park in those places. An urban traffic area is an area which is subject to a speed limit of 50 kilometres per hour. The Council's submission approved of this rule amendment but suggested that the speed limit for an urban traffic area be raised to 60 kilometres per hour. As at the date of this report, information from the NZTA website indicates that this rule is currently in the "white phase" and that the analysis of submissions is underway. (There are four phases in total for a rule amendment - blue phase (policy development), yellow phase (being prepared or out for public consultation), white phase (post consultation) and the final signed rule.)
9. Complaints relating to "heavy vehicles parked in residential areas" where a restriction in regards to this is not already in place, (clause 10) is being monitored by Parking Enforcement. As the Regulatory and Planning Committee have now adopted the operational policy, complainants are advised of the process laid out in the policy and requested to write to the Council outlining issues they believe warrant a restriction being installed. Any such requests are considered by the Transport and Greenspace Unit, which are then forwarded to the appropriate Community Board for determination.
10. Enforcement action as it relates to clauses 19, 20, 21, 22 and 23 can only be pursued by way of prosecution. This is because those clauses contained in Part 5 of the Traffic and Parking Bylaw 2008 were made pursuant to the Local Government Act 2002. There is no infringement (ticket) regime currently in place for bylaw offences created pursuant to the Local Government Act 2002. A submission seeking an infringement regime has been prepared by Legal Services which was forwarded to the Minister of Local Government in March 2009. Receipt of the submission has been acknowledged by the Minister's office. A timeframe for a decision is unknown at this juncture.

9 Cont'd

11. Where prosecution is Council's only option, such action is determined with reference to the Solicitor General's guidelines on prosecution. Those guidelines demand that before matters are pursued by way of prosecution, consideration must be given to the evidence available to substantiate the charge and whether, in each individual case, it is in the public interest to pursue the matter through the criminal courts. The general duty placed on enforcement agencies pursuant to the Solicitor General's guidelines demands a consideration of whether the individual matter warrants the intervention of the criminal law. Given the relatively low level nature of the offences created under the bylaw as compared with general criminal matters it is implied through the Solicitor General's guidelines that wherever appropriate, warnings should be given to offenders prior to enforcement agencies resorting to the criminal courts for resolution. As such, and in response to the fact that clauses made under Part 5 of the Traffic and Parking Bylaw 2008 do not carry the option currently to issue an infringement notice, Parking Enforcement staff have started to collate data on warnings issued for breaches of those offences. The authority to take prosecution action currently rests solely with the Inspections and Enforcement Unit Manager. Operational instructions issued by the Inspections and Enforcement Manager to the Parking Enforcement Team require any individual who has been issued with two warnings in relation to clauses 19, 20, 21, 22 and 23 be brought to the Team Leaders' attention for consideration as to whether it is in the public interest to pursue a prosecution.
12. **Appendix 2** is a summary of the data for all four quarters reported to the Regulatory and Planning Committee.

Adequacy of Parking Enforcement Data Collection as it relates to Parking Nuisances:

13. At the Regulatory and Planning Committee meeting on 4 December 2008, staff were directed to report annually on parking related complaints that are currently not enforceable under the Traffic and Parking Bylaw 2008.
14. The number of complaints/nuisances received by Parking Enforcement that fall outside either current legislation or bylaw offences is minimal. **Appendix 3** details 30 complaints that were received for the year 2008/09. Note the data represents nine months of the year, as the process to capture this data was put in place with the Council Call Centre starting 1 October 2008. Appendix 3 also details that only three categories of unenforceable complaints were received: Advertising signs on vehicles; persons sleeping in vehicles (cars and campervans in public places), and motor scooters/motorcycles parked in pushbike stand areas.
15. At the Regulatory and Planning Committee meeting on 2 March 2009, staff were asked to report back on all complaints received by the Council relating to sleeping in vehicles in public places, and any complaints regarding defecating/urinating in public places linked to persons sleeping in vehicles. Appendix 3 details that the Council has received a total of 14 complaints in regards to persons sleeping in vehicles. No complaint data is captured by the Council in regards to defecating/urinating in public places, as these complaints are referred to Police.
16. At the Regulatory and Planning Committee meeting on 2 March 2009, the Committee sought clarification as to how the call centre dealt with multiple calls in relation to the same complaint. The Call Centre either create a separate Customer Service Request (CSR) for each new complaint received or a note is made on an existing CSR relating to the same issue that a further complaint has been received in relation to the matter. All CSRs relating to the data contained in the attached Appendices, have been manually checked to ensure all complaints received have been reported.

9 Cont'd

Memorandum of Understanding - Development with Police:

17. On 19 June 2008 the Council passed a resolution directing staff to "begin work on developing a Memorandum of Understanding with the NZ Police". A draft Memorandum of Understanding has been forwarded to Police for review. Further meetings with Police are scheduled over the next few months with the view to reaching agreement on the contents of the memorandum.

FINANCIAL IMPLICATIONS

18. There are no financial implications arising out of this report.

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

19. Not applicable.

LEGAL CONSIDERATIONS

20. There are no legal considerations arising out of this report.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

21. Not applicable.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

22. Not applicable.

CONSULTATION FULFILMENT

23. No public consultation has been undertaken in relation to this report, however the matter has been consulted internally with the Transport and Greenspace Unit.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee receive this quarterly report for information.

10. PLANNING ADMINISTRATION MONTHLY REPORT (DECEMBER 2008 TO JUNE 2009)

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Environmental Policy and Approvals Manager
Author:	John Gibson, Planning Administration Manager

PURPOSE OF REPORT

1. This is the ninth report to the Regulatory and Planning Committee providing information about Resource Consent Applications received and processed by the Planning Administration and Subdivision teams. It contains information for the seven months from December 2008 to June 2009.
2. The report contains the following information:
 - The number of applications processed for the review period and the year to date (**Appendix 1**).
 - Notified and limited notified applications which went to a hearing for a Section 104 decision during the review period (**Appendix 2**).
 - Applications which went to a Hearings Panel for a Section 93/94 decision during the review period (**Appendix 3**).
 - Current appeals (**Appendix 4**).
 - Monthly decision of interest (**Appendix 5**) - Retrospective consent to operate a campervan and motor home rental depot from the site located at 125 Hussey Road, Christchurch.

EXECUTIVE SUMMARY

3. This report is designed to keep the Regulatory and Planning Committee and Community Boards apprised of Resource Management Act matters and issues actioned by the Environmental Policy and Approvals Unit.
4. It identifies notified and limited notified applications which went to a hearing in the months under review as well as current appeals against decisions made.
5. Feedback on what is included and what the Committee would like to see contained in further reports is welcome.

FINANCIAL IMPLICATIONS

6. Not applicable.

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

7. Not applicable.

LEGAL CONSIDERATIONS

8. The information provided in this report is held as public information. It is readily accessible and not legally privileged.

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

9. Not applicable.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

10. Not applicable.

10 Cont'd

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

11. Not applicable.

ALIGNMENT WITH STRATEGIES

12. This report aligns with the Environmental Policy and Approvals Communication Strategy.

Do the recommendations align with the Council's strategies?

13. Not applicable.

CONSULTATION FULFILMENT

14. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee receive this report for information.