

6. REMOVAL OF TREE HUT - TEMPLETON DOMAIN

General Manager responsible:	General Manager, City Environment Group DDI 941-8608
Officer responsible:	Unit Manager, Transport & Greenspace
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PURPOSE OF REPORT

1. The purpose of this report is to seek the Committee's recommendation to the Board to remove a resident constructed tree hut from a tree within Templeton Domain.

EXECUTIVE SUMMARY

2. The tree hut was built in Templeton Domain without the Council's approval and is breach of Clause 6.1(d) of the Parks and Reserves Bylaw.
3. Council staff became aware of its existence after a child fell off a rope and tyre swing and sustained an injury.
4. Advice given to the Council staff was that the local Residents' Association would protest the removal of the tree hut.
5. It is unlikely that the tree hut complies with the relevant New Zealand Standard for Playground Equipment (NZS5828). It is also possible that it may be in breach of the Building Act 2004 and Resource Management Act 1991.
6. The Community Board has the delegated authority to approve the installation of play equipment under the Reserve Management Plan for Templeton Domain dated 1980.
7. Legal advice is that Council has a health and safety liability and that the tree hut should either be removed or upgraded to comply with the relevant standard for playground equipment.
8. Clause 11 of the General Bylaw states that the Council can remove anything that has been constructed in breach of a Bylaw.
9. As outlined in paragraphs 7 and 8 above, staff recommend that the tree hut be removed.

FINANCIAL IMPLICATIONS

10. The cost to remove the tree hut is estimated at \$300.

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

11. Removing the tree hut is consistent with the 2009-19 LTCCP.

LEGAL CONSIDERATIONS

12. It is unlikely that the hut and swing currently comply with the applicable New Zealand Standard for Playground Equipment (NZS5828). It is possible that the hut and swing also breach the provisions of the Building Act 2004 and the Resource Management Act 1991.
13. The tree hut is in breach of Clause 6.1 (d) of the Parks and Reserves Bylaw which states that "no person may, without the prior permission of an Authorised Officer...bolt, drill, or place any fixture, plaque or sign in a reserve".
14. Clause 11 of the General Bylaw states that the Council can remove anything that has been constructed in breach of a Bylaw.
15. The Council has knowledge that the hut and swing are dangerous and have caused a child to be injured. Therefore, the Council is at risk of prosecution if any further injuries occur.

16. The Council could also be liable for civil claims for any property damaged if the hut or swing break again and/or for exemplary damages (although exemplary damages would only be granted in extreme circumstances).
17. If the tree hut remains on the Domain then this could potentially result in civil and/or criminal liability for the Council if someone else is injured on the swing or in the hut.
18. The costs of any physical injury suffered by a person would be met by Accident Compensation Corporation. However, the Council could be liable for the costs of any damage to personal property caused if the hut or swing fail (say for example a part of the hut became loose and fell off, causing damage to a pram underneath).
19. The Council could also be liable for exemplary damages (for example, for emotional harm suffered as a result of an injury), but exemplary damages are only granted in extreme cases.
20. The Council could potentially be prosecuted under the Health and Safety in Employment Act 1992 (section 15 of the Health and Safety in Employment Act states that every employer must take all practicable steps to ensure that no action or inaction of any employee while at work harms any other person) or the Crimes Act 1961 if it is considered that the Council has failed to take steps to make the tree hut and swing safe. However, for criminal liability to arise it would need to be established that there was a serious failing on the part of the Council. It is uncertain whether any failings in this case would be considered sufficiently serious to result in prosecution in the event of another injury.
21. If the Community Board decides to allow the tree hut to stay then it must accept the risks set out above regarding civil and criminal liability. The Community Board as an entity, or the individual members, could be liable for any civil liability arising, although the Community Board members would be indemnified by the Council as long as they acted in good faith when making their decision. However, it could be possible to prosecute the Board members individually, depending on the section of legislation used to prosecute.

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

22. Yes, as per above. The tree hut has been cordoned off to discourage use.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

23. LTCCP 2009-19:
 Parks, open spaces and waterways – Pg. 123

 Maintain playground equipment:
 - keep playground equipment safe, clean and serviceable
 - make safe or immobilise unsafe equipment within two hours of notice
24. Upgrading the tree hut to meet the required standards or constructing a tree hut that meets the required standards would require a submission to the next LTCCP.

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

25. Yes, as per above.

ALIGNMENT WITH STRATEGIES

26. Removal of the tree hut aligns with the Safer Christchurch Strategy, Goal 1; Reduce the Incident of Injury in Our Community.
27. Removal of the tree hut aligns with the safer environment outcome for the Children's Policy.

Do the recommendations align with the Council's strategies?

28. Yes, as per above.

CONSULTATION FULFILMENT

29. There has been no public consultation undertaken.

30. Staff were advised that the local residents association would protest the removal of the tree hut and that the local police constable supported it being there.

STAFF RECOMMENDATION

31. It is recommended that the Committee recommend to the Board to remove the resident built tree hut from Templeton Domain.