

26. 11. 2009

**REGULATORY AND PLANNING COMMITTEE
19 NOVEMBER 2009**

**A meeting of the Regulatory and Planning Committee
was held on Thursday 19 November 2009 at 9am.**

PRESENT: Councillors Sue Wells (Chairperson), Helen Broughton (absent from 11.30am-11.53am and took no part in the discussion and voting on items 4 and 5), Sally Buck (retired at 11.28am and took no part in the discussion and voting on items 4-6), Ngaire Button, Yani Johanson, Claudia Reid, Bob Shearing and Mike Wall.

APOLOGIES: Councillor Chrissie Williams was granted leave of absence.

The Committee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

- 1. 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

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). This is the second report on this matter to the Committee following a request by the applicant that the Council defer making a decision on this matter so the applicant could provide further information on, and make amendments to, the plan change. The requested plan change 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 amended proposed layout of land uses).

EXECUTIVE SUMMARY

2. This plan change was previously reported to the Committee at its 6 August 2009 meeting. The previous report to the Committee recommended that the plan change be rejected, and not proceed to public notification. The Act specifies grounds on which the Council may reject plan change applications. The relevant ones in this case were that the applicant had declined to provide the information requested, the plan change was not in accordance with sound resource management practice, and the plan change would make the District Plan inconsistent with Part 5 of the Act. The Committee adopted the recommendation to reject the plan change, but prior to the subsequent Council meeting the applicant asked that the Council defer making a decision so that further information could be presented and further amendments made to the plan change if necessary.

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3. As was the case when this matter was previously before the Committee, the decision required by the Council at this stage is not a full consideration of the merits of the proposed plan change. Rather the issue is solely whether the application is now adequate to proceed to be publicly notified, so that public submissions may be made on the plan change. A full consideration of the merits of the plan change will occur at a future Council hearing, which will include consideration of any submissions received. The plan change application has been modified significantly since the previous report to the Committee and further information has been provided. Staff consider that all the issues raised in the previous report have now been addressed sufficiently, or nearly, to allow the plan change to proceed to public notification.
4. In terms of those previous issues, the applicant has proposed that the additional costs the Council would have to bear in respect of the operational and depreciation costs of wastewater be resolved through a rule in the plan change. However, applicant's proposed rule does not provide a dollar amount, so the rule does not provide the information necessary to understand the implications of the proposal. That could be rectified by adding a dollar value. The Council may not agree with that dollar value, but staff have been advised that this would not be grounds for rejecting the plan change. Rather it would be a merits issue to be dealt with through the submissions and hearing process.
5. An alternative form of rule involving a formula, again without the full details, has recently been proposed by the applicant, which may also deal with the issue. The applicant and Council staff are continuing to explore the most appropriate form of rule to provide for this financial contribution, as it is a particularly complex issue. However, in terms of the decision on accepting or rejecting the application, the legal advice is that it is enough that a financial rule has been proposed. To enable the most appropriate form of rule to be included in the plan change when notified, it is recommended that the General Manager, Strategy and Planning be permitted to agree to an alternative form of rule in the plan change, provided the plan change does include a financial contribution rule.
6. Other outstanding issues have now also been addressed. In respect to open space, the plan change now only requires the Council to acquire land as reserves that it has agreed to and that land is not to be used for stormwater retention. The transportation issues and stormwater issues have been addressed. Finally, in terms of the assessment of a barrier to further urban growth, the adequacy of the information provided is questionable. However, this is not considered to be sufficient, in itself, to reject the plan change.
7. The following information is attached to the report:
 - **Attachment 1** - Prestons Road Plan Change Outline Development Plan
 - **Attachment 2** - Rule 20.1.5.

FINANCIAL IMPLICATIONS

8. The financial implications will differ depending on how the Council chooses to proceed with 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 its costs would be recovered. However, there would be an impost on staff time.
10. Should the Council adopt the change as its own then it will need to absorb all the costs. Considering the complexity of the issues, these could be considerable.

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Do the Recommendations of this Report Align with 2009-19 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, set out in the RMA, of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed. This process is very familiar to the Council and should create no particular risks or liabilities if followed correctly.

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.

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

15. Yes.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

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

CONSULTATION FULFILMENT

17. 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 Council resolve that:

- (a) The application be accepted for notification pursuant to Clause 25 of the First Schedule to the Resource Management Act 1991.
- (b) In respect of proposed Rule 20.1.5, (wastewater costs), the Council also delegate to the General Manager Strategy and Planning the ability to agree to an alternative rule format if he considered it acceptable, prior to notification of the plan change.

COMMITTEE RECOMMENDATION

Councillor Wells moved:

That the Council resolve that:

- (a) *The application be accepted for notification pursuant to Clause 25 of the First Schedule to the Resource Management Act 1991 and it note that the costs of processing the Private Plan Change will be borne by the proponent.*

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- (b) *It agree that Rule 20.1.5 (as attached) is intended to cover all net wastewater costs, including additional operational costs to other parts of the network, to the Council of opening up "the third front" and note that the proponent of the private plan change agrees with this interpretation.*

The motion was seconded by Councillor Wall, and on being put to the meeting was declared **carried** on Division No. 1 by 6 votes to 2, the voting being as follows:

For (6): Councillors Button, Johanson, Reid, Shearing, Wall and Wells.

Against (2): Councillors Buck and Broughton.

BACKGROUND

18. This plan change was previously reported to the Committee at its meeting on 6 August 2009. The decision required by the Council at this stage was not a full consideration of the merits of the proposed plan change. Rather, the issue was solely whether the application was adequate to proceed to be publicly notified, so that public submissions may be made on the plan change. A full consideration of the merits of the plan change would occur at a future Council hearing, which would include consideration of any submissions received. The report recommended that the plan change be rejected, and not proceed to public notification, on the grounds that:

- (a) The assessments of some relevant issues were inadequate and the applicant had declined to provide the information requested (Clause 23(6)).
- (b) The plan change was not in accordance with sound resource management practice (Clause 25(4)(c)).
- (c) The plan change would make the District Plan inconsistent with Part 5 of the Act, which requires provisions proposed to be included in a Plan to be consistent with the objectives and policies of the Plan (Clause 25(4)(d)).

These are grounds for rejecting a plan change under the First Schedule of the Act. The report also noted a number of issues that could be dealt with through submissions by the Council on the plan change. The Committee adopted the recommendation to reject the plan change, but prior to the subsequent Council meeting the applicant asked that the Council defer making a decision so that further information could be presented and further amendments made to the plan change if necessary.

19. The Council received amendments and further information from the applicant on 1 September 2009. This included comments on legal matters, including references to recent case law. The amendments included "possible" alterations to the Outline Development Plan (ODP). Staff have since been advised that the applicant wishes the plan change to be considered on the basis that these amendments are incorporated into the plan change (the amended ODP is contained in Attachment 1). There have been further discussions and correspondence with the applicant proposing further amendments in a letter dated 2 October 2009.
20. A draft report was subsequently sent to the applicant which highlighted matters that were still not adequately addressed and suggested means that could be used to address those matters. The applicant has taken up many of those suggestions and has continued to pursue all of the outstanding issues.
21. To avoid unnecessary repetition, this report does not include all the detailed information provided in the original report to the Committee meeting on the 6 August 2009. Rather, it concentrates on discussing whether the amendments made to the plan change, and the additional information received, affect the issues in the previous report to the Committee that lead to the recommendation to reject the plan change. The decision required by the Council at this stage is, again, solely whether the plan change is sufficiently adequate to be accepted for notification or rejected. The original recommendations on the other options available to the Council, in terms of processing this plan change under Clause 25, still stand and are not discussed further.

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22. Legal advice has been obtained on the information, legal submissions, and amendments received from the applicant, and that advice included a review of recent case law. The advice remains unchanged from that provided to the previous Committee meeting in terms of the relevance of issues to the decision as to whether the Council should reject a plan change. As discussed below, some of those issues have now changed or no longer exist. The recent case law was not considered to change the legal advice previously given, except that it indicates that a further ground for rejection may apply in this case. It appears that the Council could, on the face of it, also rely on Clause 25(4)(b) because the issue of the urban development of this land was considered in the Urban Development Strategy within the last two years. However, given the degree to which the other matters have been addressed, which led to the original recommendation to reject this plan change, this is unlikely to be sufficient by itself to be grounds for rejecting the plan change (James Winchester (Simpson Grierson) will be available to discuss this issue if required).

THE PLAN CHANGE PROPOSAL

23. The plan change request involves the rezoning of approximately 205 hectares of land between Lower Styx Road and Mairehau Road, to the east of Marshland Road from Rural to Living G (Prestons) zone (refer to the proposed layout of land uses 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 Marshland Road, except for the proposed main commercial area which extends to Marshland Road on the southern side of Prestons Road.
24. 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 2247 households and a maximum of 2594 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. The plan change is not located within one of the Greenfield Areas where urban growth is proposed to be permitted in Regional Policy Statement Proposed Change No.1 (PC1), but there are submissions seeking the inclusion of the plan change land within a Greenfield Area. There have been hearings on the submissions on PC1, but no decisions have been released. The plan change does achieve some details of the PC1 policies, such as providing a range of residential densities and it has the potential to achieve a density for the plan change site overall of 15 households per hectare, as required by PC1 (although it may result in an overall density as low as 13 households per hectare).

THE ISSUES

Wastewater

25. The previous report to the Committee raised a number of issues in respect of wastewater. There is no provision in the LTCCP for a wastewater system for the Prestons area and the advice from Council officers was that it was a significantly less efficient area to service than other growth areas. It was also considered that it would increase the operational and depreciation costs for the City, both in respect of the wastewater infrastructure required for the Prestons growth area and in respect of the other growth areas the City was providing for. It was noted that the objective and policies of the City Plan seek an efficient provision of services. An assessment of these matters had been requested from the applicant, but had not been provided. The applicant had responded by agreeing that there should be no net cost to the City, but had not responded to requests to indicate how it was proposed to achieve this. The advice to the Council was that it should not be forced to take on those costs or rezone land when there was no definite commitment to pay for the infrastructure.

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26. In terms of the construction costs of the wastewater infrastructure, the applicant has now amended the plan change to include a rule (20.3.6(a)) requiring the applicant for a subdivision consent to provide a plan for the overall wastewater system for the plan change site. It also requires the applicant to establish the approved system. It was not clear whether the rule required the applicant to establish the infrastructure both within, and beyond, the Living G (Prestons) zone, but the applicant has since agreed to amend the rule to clarify that both are required. This adequately deals with the costs of constructing the wastewater system in the circumstances of a subdivision (there are some other details of the wording of the rule that also need amending). The rule does not, however, deal with the possibility of development occurring without a subdivision. This could be overcome if the applicant is agreeable to a similar rule being included in the zone rules. This has now been confirmed.
27. The operational and depreciation costs for both the infrastructure required for Prestons and the additional costs for other growth areas have not yet been fully addressed. The financial contributions rule proposed in the letter of 2 October 2009, on behalf of the applicant, required those costs to be charged out for each household unit equivalent created. In principle this is a mechanism that could deal with these costs. However, the proposed rule leaves the dollar amount blank, so the rule does not provide the information necessary to understand the implications of the proposal. That could be rectified by adding a dollar value. The information and responses provided by the applicant on this issue in the past, including copies of evidence presented on the applicant's behalf at the PC1 hearings, suggest that the applicant has very different views from the Council on what the potential costs to the City are likely to be. However, staff have been advised that this would not be grounds for rejecting the plan change. Rather it would be a merits issue to be dealt with through the submissions and hearing process.
28. The applicant and Council officers are in discussions as to how best to provide for this issue in the plan change rules. It is not a simple issue to resolve and the applicant has recently suggested an alternative rule (20.1.5) which would introduce a formula for a financial contribution, but without the details of the formula. Either form of rule could adequately deal with the issue and staff conclude that this issue is no longer a matter that could justify rejecting the plan change, provided a financial contribution rule in one form or another is included. Staff recommend that if the Committee were to recommend that the Council accept the plan change for notification, that it also delegate to the General Manager, Strategy and Planning, the ability to agree to an alternative rule if he considered it acceptable, prior to notification of the plan change.

Transport

29. A significant transport issue raised in the previous report to the Committee was that the development was highly dependent on a number of future road works to accommodate the anticipated traffic. However, there was no proposal that a restriction be placed on the rate of development of the plan change site relative to which road works were completed, except in relation to the northern arterial. After the previous Committee meeting, agreement was reached between the applicant's and the Council's traffic engineers as to the modelling that needed to be done and the general form of plan change provisions that could deal with this issue. The plan change has now been amended to incorporate rules requiring staged development dependant on the commencement of construction of a number of road works. The reference to the commencement of "construction" overcomes another issue with the previous rule, which restricted development only until planning approval of the required works had been obtained, rather than when construction had begun. The staging rules are included in both the subdivision and zone rules.
30. The road works rule provided in September indicated solely that the specified intersections would be upgraded with traffic signals, but did not indicate other matters of upgrading required, such as the number of lanes required to achieve the Levels of Service indicated in the assessment with the application. The applicant has now provided plans of these details of the road works required for incorporation in the rule. The most recent rule no longer specifically indicated that the upgrades would include traffic lights, but the applicant has agreed to reinsert the requirement for traffic lights.

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31. The plan change did not indicate the upgrading necessary for the Mairehau/Marshland intersection and the relevant rule simply required "an appropriate improved intersection", which lacked certainty as a rule. However, the applicant has recently proposed an amended rule that requires that a specific upgrade design be provided at this intersection from the outset of the development. The rule package also proposed to prohibit any road connection to Mairehau Road until such time as the appropriate improvement occurs, which could have had significant adverse transportation implications. The applicant has indicated that this should now be removed.
32. There are a number of other aspects of the proposed rules that lack sufficient certainty or require some fine tuning. For example, the staging rules need to be included under the special provision that applies to the commercial areas (Rule 8.1.3), however the intent is clear from the application and such matters can be dealt with after a decision on notification and prior to the notification itself.
33. Finally, a new rule is proposed to deal with the issue of road safety along Mairehau Road arising from the high speed limit that will exist. This rule prohibits vehicle access onto Mairehau Road, which will obviously overcome the safety issue of multiple vehicle crossings on such a road. However, staff note that this is likely to result in this section of Mairehau Road having a frontage of rear fences and that this is not necessary to overcome the issue. The advice staff has been given is that vehicle crossings would be acceptable on this frontage, provided there was a provision in the plan change that ensured the upgrading of the road to an urban standard on the northern side of the road. Staff raised this solely as an alternative the applicant may wish to consider, as a better resource management outcome, and not as a reason for rejecting the notification of the plan change. Staff understand that the applicant does not wish to amend this rule, as it is considered to provide some benefit in creating a barrier to further urban growth.
34. Staff conclude that there are no longer any transportation grounds for rejecting the application.

Stormwater

35. The previous report to the Committee raised issues relating to the stormwater management system being proposed, particularly the maintenance implications on the City of the large number of small retention basins, the potential for the basins to be wet rather than dry basins, and that possibly double the land area indicated would be required for the retention basins. The plan change has now been amended by removing any indication of the number and location of basins. This removes the implication that would arise from the original plan change, that the Council would be willing to accept such a system.
36. It does create some uncertainty as to what the final form of the stormwater management system will be and how it will impact on other activities provided for in the plan change. However, generally this is not considered to be of significance at this stage of the plan change. As noted in the previous report the area of land used for retention basins is not included in the calculation of the densities that PC1 requires to be achieved. It is not totally consistent with Policy 8(c)(vi) of PC1, which requires that retention areas be shown, but staff do not consider that is of significance in terms of the decision on notification required at this stage.
37. There is still potential for the linear park to be used for wet basins (the potential for which still exists based on the data held by the Council). The possibility of wet basins is particularly relevant in the vicinity of the higher density residential areas, which should be provided with higher levels of parks to meet their recreational needs in line with the policies in PC1. If the linear park in these areas is used for wet ponds they will have limited recreational potential. However, this matter has been dealt with to the degree that the applicant has agreed to amend the plan change to ensure that the specific parks sought by the Council (as discussed below) will not be available for stormwater retention areas.
38. Staff conclude that there are no longer any stormwater issues that would justify rejecting the plan change.

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Open Space/Parks

39. The previous report to the Committee indicated that the plan change contained an implicit obligation that the City would accept the linear park as reserves, which is a matter that the Council has sole discretion over through the Development Contributions Policy under the Local Government Act. The Greenspace Team did not agree with what was proposed and considered that other land was necessary to accord with the reserve priorities the Council would have for this area. The order of those priorities is as follows;
- (1) Extending Marshlands Domain by 2-3 hectares (making a total of 4-5 hectares),
 - (2) Including neighbourhood parks of approximately 4,000m² 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 ha.,
 - (4) Reduced green linkages.
40. The Greenspace Team indicated that parks in (1) and (2) at least, should not include stormwater management areas, but could adjoin such areas. The Greenspace Team also indicated that the land included in the linear park alone considerably exceeded the reserves the Council could acquire through development contributions. I note that the Greenspace Team are not seeking to determine the allocation of all of the potential development contribution for reserves. To attempt to do so at this stage is fraught with difficulties, as it depends on many factors that are uncertain, such as the actual final number of sections created, the value of the land at the time of subdivision, and changes to the Development Contribution Policy that may occur prior to subdivision. Instead, what is being sought is to establish the principle reserve requirements, with any excess contributions being resolved at the time of subdivision.
41. The report concluded that it was not appropriate for a plan change to contain such an implicit obligation that the Council had not agreed to, particularly where the alternative priorities sought by the Council were more consistent with the objectives and policies of the City Plan. These were considered to be grounds for rejecting the plan change in that it would not be in accord with sound resource management practice, and that the plan change would make the District Plan inconsistent with Part 5 of the Act.
42. The additional material provided by the applicant in September included a new rule (20.1.4 Creation of Public Open Space). Sub-clause (a) of this rule requires that subdivisions which create public open space are to be in accord with the ODP. Such a rule would constrain even further the ability of the Council to take reserve land that it considers to be appropriate if it is not in the linear park. Following consideration of the draft of this report the applicant has inserted a new sub-clause which states that the only land that the may be vested in the Council as reserve are certain specified areas (discussed in more detail below). This still does not quite deal with the issue, as it does not make it clear that the Council will not be required to acquire other parts of the linear park by other means. The applicant has since agreed to amend the sub-clause so that it states that the specified areas of land are the only ones the Council is required to accept.
43. The specified areas of land that the Council is to accept now include a 2 hectares extension to Marshlands Domain and two neighbourhood parks. The arrangement of parks is not quite as Greenspace had requested, as the locations selected mean some residents may be more than 400 metres from either a neighbourhood park or the Domain. However, the Greenspace Team have advised that they are willing to accept the proposals, and will acquire two additional neighbourhood reserves at the time of subdivision consent.
44. There was a related issue raised in the previous report to the Committee, which was the lack of certainty about what parts of the linear park will be accessible to the public and provide for their recreational needs. This certainty has been provided in respect of reserves, through the amendments which now specify the reserves that the Council has agreed to acquire.

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45. With respect to those parts of the linear park that are not necessarily going to be acquired by the Council, an amendment to the rules now requires that land to be accessible to the public. A similar rule should also be included in the Living G rules, rather than just the subdivision rules, to ensure that any privately owned portions of the indicated open space are accessible to the public. Staff understand that this is the applicant's intention and this amendment can be incorporated prior to notification of the plan change. Staff note that the October letter on behalf of the applicant proposed the inclusion of an assessment matter that an appropriate mechanism is proposed in any subdivision to ensure that open space not vested in the Council is accessible to the public. This has not been included in the latest draft of the rules, so it would be helpful if the applicant could advise if it is still intended to be included in the plan change.
46. Staff note that one of the implications of the plan change is that parts of the linear park may be privately owned open space. This could cause difficulties in terms of the public perception of who owns, and is responsible for, these open spaces, and there is the prospect that the maintenance of these areas may ultimately fall on the Council. However, I do not consider that either of these matters are significant to the decision on whether the plan change should be notified. Staff note that the October letter on behalf of the applicant proposed the inclusion of an assessment matter relating to whether appropriate provision is made for the maintenance of open space not vested in the Council. This has not been included in the latest draft of the rules, so it would be helpful if the applicant could advise if it is still intended to be included in the plan change.
47. Staff conclude that there are no outstanding matters relating to open space/reserves that would justify rejecting the plan change

Barriers to Further Urban Growth

48. A further issue raised in the previous report to the Committee arose from Policy 6.3.10, which seeks, as a preference, a well defined barrier to urban growth on the urban/rural boundary. The plan change proposes both a considerable movement of that boundary and a very considerable extension to the extent of that boundary, with a corresponding increase in the potential for further urban expansion as a result of the plan change. An assessment of the plan change in respect of this policy is therefore significant. The previous report to the Committee indicated that the application identified some features of the plan change, but did not include an assessment (i.e. a reasoned explanation) as to how effective those features will be in forming a barrier to further urban growth. Staff note that at this stage of the plan change process the issue is not whether the Council agrees with the conclusion. Rather it is simply whether there is a consideration of the relevant factors and whether it contains an explanation as to why, and to what degree, those factors lead to a conclusion that they will provide an adequate barrier to further urban growth beyond the plan change site.
49. The information provided by the applicant after the previous Committee meeting contained a report titled "Prestons Road Ltd – Urban Boundary Assessment", which comments on a number of matters relating to the barriers issue. The draft officer report for the Committee that was sent to the applicant considered that the assessment was still inadequate. A short supplementary report has since been provided by the applicant which addresses, to some degree, the concerns raised in the draft officer report.
50. In total, the information contains a very brief explanation on how some features of the plan change could act as barriers to urban growth, in some cases those features apply to a limited part of the site. However, the assessment is considered to be deficient in respect of the following matters that it raises:
 - (a) The report identifies that the surrounding Rural 1 and 3 zoning would make it unlikely for resource consents to be granted for urban development in those zones as they would be non-complying activities. However, it does not address further plan changes, which will not be judged on the basis of consistency with the existing zoning.

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- (b) The report does not address what the policy is trying to achieve, which is some sort of barrier in addition to the rural zoning that will almost invariably bound such a proposed urban extension.
- (c) The report relies on Policy 2.1.1. Versatile Soils, but does not assess the existing limits on the potential of the versatile soils to be used for activities that rely on them, particularly those limits expressed in the report of the applicant's agricultural consultant.
- (d) The report states that the golf courses are reserves, but provides no assessment explaining the effect these "reserves" could have in providing a barrier to future urban growth.

51. In staff's view the application has not addressed some important factors in respect of this issue and has not provided the information requested. Staff acknowledge that the application has provided an assessment, to some degree, on some of the relevant factors. As with much of the plan change application process, there is little case law on the level of information necessary for an application to meet the requirements for an assessment of effects and an assessment in terms of section 32. Having discussed this aspect with the Council's legal advisors, there is some doubt as to whether this issue would, in itself, be sufficient to justify rejecting the plan change application.

Other Matters

- 52. The previous report to the Committee raised the issue of the lack of an assessment of the risk of golf balls from the adjoining golf courses. An assessment has now been provided.
- 53. The previous report to the Committee indicated that the applicant had declined to provide an assessment of the implications of the split form of suburban centre proposed. The applicant has now amended the ODP, moving the commercial areas that were around the Marshlands Domain to the area between Marshlands Domain and the commercial area fronting onto Marshland Road. The issues of a split centre therefore no longer require assessment. The amendment is likely to reduce the accessibility of the centre to some degree, but it is not considered that this is a grounds for rejecting the plan change.
- 54. The issue of the lack of management of the design and appearance of buildings in the higher density areas was mentioned in the previous report to the Committee, but not as a grounds for rejection. Staff note that the applicant has proposed a new rule proposing to make some of these matters a controlled activity.
- 55. As noted in the previous report, a certain amount of fine tuning still needs to be undertaken with respect to the rule package, in addition to those matters noted in this report. However, the intentions are reasonably clear to enable this to be done after the decision on the notification of the application.

CONCLUSION

56. The application has been modified significantly since the previous report to the Committee, to the point that it is no longer considered that there are grounds to justify rejecting the application.

THE PREFERRED OPTION

57. That the plan change be accepted for notification. Further, that the General Manager, Strategy and Planning, be given the authority to agree to an alternative rule format for Rule 20.1.5 (relating to wastewater infrastructure costs) prior to public notification.

2. CONSULTATION ON DRAFT REGIONAL POLICY STATEMENT CHAPTERS ON LANDSCAPE, ECOSYSTEMS AND INDIGENOUS BIODIVERSITY AND THE COASTAL ENVIRONMENT

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

PURPOSE OF REPORT

1. The purpose of this report is to provide the Council with an overview of the issues arising in draft chapters of the Canterbury Regional Policy Statement (CRPS), currently being reviewed by Environment Canterbury (Environment Canterbury), and to gain the Council's support on recommendations for feedback to Environment Canterbury with regard to the draft chapters on "The Coastal Environment", "Ecosystems and Indigenous Biodiversity" and "Landscape".
2. This is a non-statutory process which allows for consultation at an early stage of the review. It replaces the Environment Canterbury seminars and workshops previously held for the Council. Instead, the Regulatory and Planning Committee will be provided with a number of draft CRPS chapters for discussion at a workshop, a report and staff recommendations for feedback to Environment Canterbury. The Council has already provided comments on the draft "Waste Minimisation and Management", "Contaminated Land" and "Hazardous Substances" chapters in September 2008, the draft "Heritage", "Energy" and "Air" Chapters in November 2008, and the draft Soils" and "Beds of Rivers and Lakes and their Riparian Zones" in July 2009. The formal Resource Management Act (RMA) consultation process will take place next year when the entire draft CRPS is completed and notified as a Proposed Policy Statement.
3. The Committee is requested to confirm the comments (presented in the grey boxes in each draft chapter attached) on the proposed draft chapters.

EXECUTIVE SUMMARY

4. The CRPS provides an overview of the resource management issues for the Canterbury region and is prepared to meet RMA 1991 requirements. The policies it contains affect the way the Council manages its District Plan as the Council will have to give effect to the CRPS (as required under section 75 of the RMA). Environment Canterbury is currently reviewing the CRPS and is seeking input from the Council as part of the review.
5. Draft Chapter XX Landscape, Draft Chapter 8A Ecosystems and Indigenous Biodiversity and Draft Chapter 11 The Coastal Environment (see **Attachments 1, 2 and 3**) discuss issues with regard to: landscape management; natural ecosystems and indigenous biodiversity; and the coastal environment. The Council's proposed comments and recommendations are also found in each chapter.
6. The Environment Canterbury review of current provisions concluded that landscape provisions in the CRPS should be more comprehensive in regard to fuller explanations of terminology, and provide greater guidance in identifying outstanding natural features and landscapes within Canterbury. The 2009 Canterbury Regional Landscape Study Review up-dates the 1993 Canterbury Landscape Study and has also informed the review of the CRPS landscape provisions. A separate chapter was therefore proposed for landscape. The need for a separate chapter, which takes into consideration current information and requirements, and the proposal to strengthen and clarify current provisions is supported. Minor changes to the text are suggested to improve clarity. The Chapter provides a definition of landscape, although it is recommended that the definition be placed in the "glossary of terms". The proposal to move Objective 4 and Policy 6 to the proposed Chapter Heritage, is supported but it is recommended that the links between the two chapters are made clear in the text. Although staff are supportive of the outcomes of the draft 2009 Canterbury Regional Landscape Study Review, to date they have only been presented with a draft document. Therefore, comments regarding Policy 1 and its Methods can only be taken into account in relation to the draft Review. Detailed comments on the draft Landscape Chapter are located throughout Attachment 1.

2 Cont'd

7. Draft Chapter 8A Ecosystems and Indigenous Biodiversity is a rewrite of the current Chapter 8. The Environment Canterbury review of the current Chapter considered that CRPS provisions are needed to protect indigenous biodiversity (RMA Sec. 6) and that these provisions be clear as to what indigenous biodiversity should be protected from. The review also concluded that the CRPS should not include provisions that go further than what is required by section 6 (i.e. maintenance or enhancement of biodiversity). A CRPS chapter on Ecosystems and Indigenous Biodiversity is supported as there have been changes to legislation (RMA amendments) and greater strategic guidance provided at a national (The New Zealand Biodiversity Strategy) and regional level (Regional Biodiversity Strategy). However it is difficult to provide feedback on the draft chapter in its current state as it is lengthy and fragmented. The initial feedback provided to Environment Canterbury in July 2009 detailed similar comments, however the draft chapter has not been revised significantly and no explanation has been provided. Detailed comments on the draft Ecosystems and Indigenous Biodiversity Chapter are located in Attachment 2.
8. The Environment Canterbury review of the current Chapter 11 The Coastal Environment highlighted a number of changes at the national level, for example changes to the RMA and the notification of the proposed New Zealand Coastal Policy Statement 2008 (NZCPS), which will affect CRPS environmental planning provisions. The intent of the draft Chapter which seeks to ensure that natural coastal processes are maintained is generally supported. It is, however, difficult to provide comments on the draft Chapter as it is lengthy and fragmented, in that there are several instances of repetition of sentences and issues, Objectives and Explanations are not presented clearly and in some cases, the intent to show links to the NZCPS is not achieved. There are sections of the proposed NZCPS presented as policy verbatim rather than presented within a Canterbury context. The initial feedback provided to Environment Canterbury at the Rolleston TLA meeting in December 2008, does not seem to have been taken into consideration, however, no explanation has been provided. Detailed comments on the draft The Coastal Environment Chapter are located throughout Attachment 3.

FINANCIAL IMPLICATIONS

9. The CRPS could result in additional resources being required to amend planning documents in order to give effect to the CRPS. Giving effect to the final CRPS will be achieved through a variety of mechanisms including the Christchurch City Plan and Banks Peninsula District Plan and the LTCCP. The extent of any resources required is unclear at this stage and will need to be considered in subsequent LTCCP or Annual Plan processes.

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

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

LEGAL CONSIDERATIONS

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

11. The RMA provides for the Regional Council (Environment Canterbury) to prepare Regional Policy Statements and review them. The Council is participating in the Environment Canterbury consultation process in the preparation of the proposed Chapters. The Council will also have the opportunity to influence and shape the proposed CRPS through the formal submission process which is scheduled for mid 2010.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

12. The chapters support the LTCCP 2009-19 objectives that aim to ensure that the city's environment, biodiversity, heritage and important landscapes are maintained and that the effects of the city's growth and development is managed to ensure protection of the coastal environment.

2 Cont'd

ALIGNMENT WITH STRATEGIES

13. The recommendations support the Council's Biodiversity Strategy, Public Open Space Strategy (in preparation), and the provisions relating to biodiversity, landscape and the coastal environment in the Christchurch City Plan and the proposed Banks Peninsula District Plan.

Do the recommendations align with the Council's strategies?

14. As above.

CONSULTATION FULFILMENT

15. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Council provides feedback to Environment Canterbury on draft chapters attached XX, 8A and 11, of the Draft Regional Policy Statement.

COMMITTEE RECOMMENDATION

That the Council provides feedback to Environment Canterbury on draft chapters attached XX, 8A and 11, of the Draft Regional Policy Statement including the following amendments:

- Chapter XX (p.8) Incorporate a sentence to explain hierarchy of landscape policy documents.
- Chapter 11 (p.2) Provide consistency with other publications in the use of the term "significantly contribute".
- Chapter 11 (p.11) Policy 11.2 – address the wording "significantly compromised" to Environment Canterbury and request that the policy be reworded for clarity.
- General – advocate using plain English where possible throughout the draft chapters.

BACKGROUND

16. The CRPS became operative in 1998 and is required to be reviewed within ten years of it becoming operative. Environment Canterbury is responsible for the review of the CRPS and is consulting with all Canterbury territorial authorities throughout the review process.
17. This review is a separate process to the preparation of Proposed Change No. 1, which introduces a new Chapter 12A, (Development of Greater Christchurch). Chapter 12A sets out land use distribution, particularly for areas available for urban development, the household densities for various areas and other key components for consolidated and integrated urban development. It also identifies land which is to remain rural for resource protection and enhancement and other reasons.
18. Environment Canterbury began discussions over the review of the CRPS with District Councils in late 2006. Environment Canterbury has consulted with Territorial Authority (TA) Officers on the review process, Issues and Options papers and draft chapters of each CRPS chapter. Discussions have taken place (and will continue to) at the officer level through workshops and meetings and at the councillor level through Council and Committee meetings.
19. The current CRPS consists of 14 Chapters which discuss various regional issues (e.g. water, soil and landscape) and provide objectives, policies and methods with regards to these issues. During the review process, it was decided that some issues would be better dealt with in new chapters (e.g. contaminated land which was previously dealt with in Chapter 7 Soils and Land Use) or better dealt with in conjunction with other issues (e.g. the proposed Settlement Chapter will also have transport provisions as well as deal with issues regarding versatile soils).

2 Cont'd

20. The following sections of the report summarises Environment Canterbury 's review of current Chapters: XX Landscape, 8A Ecosystems and Indigenous Biodiversity, and 11 The Coastal Environment.
21. The CRPS current landscape provisions are found in a number of chapters including Chapters 8 Landscape, Ecology and Heritage, 10 Beds of Rivers and Lakes and their Margins, 11 Coastal Environment, and 12 Settlement and the Built Environment.
22. Currently Chapters 8, 10 and 11 have one Objective that directly covers natural features and landscape and one Policy each that relates to the Objective. Current Chapter 12 has two Objectives and Policies that cover natural features and landscapes. The Environment Canterbury review concluded that it is difficult to assess the effectiveness of the current provisions as the current CRPS provisions are discretionary, the natural features and landscapes to be protected from inappropriate development are not identified and that District Councils, rather than Environment Canterbury are responsible for the implementation of the Objectives and Policies where they relate to land management. This approach has led to varying degrees of identification and protection taking place across the region as there different landscapes, threats and values which are managed in a number of ways by District Councils. The review also considers that the existing provisions provide little more guidance than that provided by the RMA and therefore recommend that greater coverage of the issues surrounding landscape management, as well as a range of policy and methods options, was needed.
23. Provisions for indigenous biodiversity are found primarily in the current Chapter 8 Landscape, Ecology and Heritage. Related provisions are also found in current Chapters 9 Water, 10 Beds of Rivers and Lakes and their Margins, and 11 Coastal. The Environment Canterbury review of Chapter 8 shows that biodiversity provisions are found throughout the chapter and are often addressed alongside other matters or in context of other matters. This approach has resulted in a difficult chapter to use. Although some biodiversity and ecosystem matters are provided (for example wetlands), the current chapter does not meet the requirements of the RMA in terms of content regarding biodiversity as it does not specify which local authority is responsible for specifying objectives, policies and methods for the control of the use of land for the maintenance of biodiversity. The review also concluded that the current CRPS provisions to determine regional significance are ineffective as the criteria are complex and ambiguous.
24. The current Chapter 11 has five issues, although the last two simply point to other parts of the CRPS. Issue 1 is broad and identifies a number of adverse effects of different human activities on a number of coastal values. There are two Policies that relate to Issue 1. Issue 2 is concerned with public access, while Issue 3 is concerned with the adverse effects of recreational crafts and vehicles in the coastal environment. Each has one related Policy. Issues 4 and 5 refer to discharges outside the coastal marine area and coastal erosion and salt water inundation respectively. References are made to Chapter 9 Water and Chapter 16 Natural Hazards, however neither Issue have related Policies in Chapter 11.
25. The Environment Canterbury review of the current Chapter 11 The Coastal Environment highlighted a number of changes to the RMA (for example, with regard to aquaculture, occupation and allocation of coastal space) and the notification of the proposed NZCPS which will affect CRPS environmental planning provisions. The review also noted that a proposed chapter on the coastal environment would also need to take into account the proposed NZCPS (for which a decision on the final document has not yet been released). The review recommended that rather than waiting for the decision on the NZCPS, the current Chapter should be revised taking into account relevant parts of the proposed NZCPS. A definition of the coastal environment would be prepared based on that of the proposed NZCPS. A new Policy dealing with the maintenance of the coastal environment, and method to achieve that Policy would be prepared. Policy 1 would be amended to take into account national priorities set out in the NZCPS. The method under Policy 3 for district plans would be rewritten to be more directive. Issues 4 and 5 would be replaced with references to Chapters 9 and 16 in the introduction to Chapter 11. Policy 4 would be expanded to include commercial as well as recreational activities.

3. LAND TRANSPORT (ROAD USER) AMENDMENT RULE 2009

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

PURPOSE OF REPORT

1. The purpose of this report is to:
 - (a) Advise the Council on the amendments made to the Land Transport (Road User) Rule 2004 with respect to grass verges and berms
 - (b) Seek approval of the Council to promote an amendment to the Christchurch City Council Traffic and Parking Bylaw 2008.

EXECUTIVE SUMMARY

2. On 1 November 2009 the most recent amendments to the Land Transport (Road User) Rule 2004 came into force. They include the revocation and replacement of clause 6.2 of the Rule. Clause 6.2 (1) now provides that a person must not stop, stand or park their vehicle on a roadway if the person can stop, stand or park on the road margin "*without damaging ornamental grass plots, shrubs, or flower beds laid out or planted on the margin*". However, subclause (1) does not apply if the Council has provided signs or markings, or made a bylaw, indicating that a different rule applies.
3. There will only be a breach of clause 6.2(1) where someone parks on the road margin, if the road margin has been planted as described, the plantings are damaged, and there are no signs or markings on the road or a bylaw that indicates any other rule applies. An infringement notice can be issued in respect of this offence with a fine of \$40.
4. Parking on a road margin that has not been planted as described, and/or where there is no damage to the plantings does not amount to an offence under clause 6.2(1).
5. Signs or markings "*indicating that a rule different from the one in subclause (1) applies*" could be parking signs and road markings that indicate parking on the roadway is allowed, although those signs/markings would not indicate any rules in relation to parking on the road margin. However, the Council has a bylaw which provides what is to happen on at least some planted road margins.
6. On 1 July 2008 the Council's Traffic and Parking Bylaw 2008 came into effect and clause 9 of that Bylaw provides that no person may stop, stand or park a motor vehicle on a grass berm or verge where prescribed signs indicate no stopping, standing or parking, as the case may be.
7. For the reasons outlined in the background section below the writers of this report believe that most of Council's grass berms and verges will come within the meaning of "*ornamental grass plots...laid out or planted on the margin*". The writers also consider that clause 9 of the Bylaw indicates that a different rule applies from that contained in clause 6.2(1) of the Road User Rule. Clause 9 of the Bylaw does not require that there be any damage to the grass berm or verge from the stopping standing or parking, and the Bylaw also requires that there be signs to indicate the no stopping/parking requirement.
8. To ensure that the Council can still issue infringement notices in any situation where the requirements of clause 6.2 are met, the Bylaw should be amended to provide that the Bylaw does not conflict with clause 6.2. This will make it clear that the Council would not be required to have signs erected in those situations.
9. The rest of clause 9 is still required so that the Council can provide for no stopping/parking signs in any situations which are not covered by clause 6.2, for example, where damage to the margin might not be caused by parking, but the Council wants to prevent people parking on the margin for other reasons (congestion, etc), or to cover grass berms or verges that are not laid out or planted as described (e.g. riverbanks, or self grown verges such as along QEII Drive or Halswell Road).

3 Cont'd

10. In order to amend clause 9 of the bylaw, a Special Consultative Procedure (SCP) is required. That consultation can be carried out at the same time as another SCP, if that is considered appropriate.

FINANCIAL IMPLICATIONS

11. There is a cost to Council in carrying out the SCP to amend the Bylaw. If the amendment to clause 9 is consulted on at the same time as another amendment to the Traffic and Parking Bylaw 2008, or another SCP, then that will reduce the costs for Council.
12. Another financial implication of the recommended option is that costs to Council of installing signage on some cultivated areas in the city to prevent parking that causes damage on those areas, will not now be necessary, leading to a saving for any applicable areas where it was contemplated signage would be installed. Signs will still be required in other areas.

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

13. The cost of the SCP will be included within existing budgets for such processes

LEGAL CONSIDERATIONS

14. Sections 83, 83A, 86 and 89 of the Local Government Act 2002 will be applicable if the recommended option, to amend the bylaw, is accepted and an SCP is to be carried out. Other legal considerations concern the provisions of the Road User Rule and the amendment to clause 6.2 which comes into force on 1 November 2009. Those provisions are discussed in full in the background section of this report.

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

15. Yes – see the background section of this report.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

16. Not applicable

ALIGNMENT WITH STRATEGIES

17. The Council's Parking Strategy 2003 includes the aim of minimising the impact of parking on the natural and physical environment and supporting the sustainable use of resources.

Do the recommendations align with the Council's strategies?

18. Yes the recommended option supports the above strategy.

CONSULTATION FULFILMENT

19. The options in this report, including the proposal to amend the Bylaw to cater for the Road User Rule amendment, have been discussed among staff in the Legal, Parking Enforcement and Network Operations teams. The community will be consulted with in relation to the proposed amendment to the Bylaw through the SCP process.

3 Cont'd

STAFF RECOMMENDATION

That the Council:

- (a) Note the information provided in this report regarding the amendment to the Road User Rule and its potential effect in relation to the Council's Traffic and Parking Bylaw 2008.
- (b) Instruct staff to prepare the necessary documents for a special consultative procedure to amend clause 9 of the Traffic and Parking Bylaw 2008, and bring the matter to a Council agenda so that the consultation will be able to take place concurrently with another appropriate special consultative procedure.

COMMITTEE RECOMMENDATION

That the Council:

- (a) Note the information provided in this report regarding the amendment to the Road User Rule and its potential effect in relation to the Council's Traffic and Parking Bylaw 2008.
- (b) Instruct staff to clarify the change with the New Zealand Transport Agency and Local Government New Zealand and report back to the Regulatory and Planning Committee in 2010.

BACKGROUND (THE ISSUES)

Christchurch City Council Traffic and Parking Bylaw 2008

20. On 1 July 2008, the Christchurch City Council Traffic and Parking Bylaw 2008 came into force. Clause 9(1) of the Bylaw provides that no person may stop, stand or park a motor vehicle on a grass berm or verge where prescribed signs indicate no stopping, standing or parking, as the case may be. Contravention of this clause, where signs have been erected, allows an infringement notice to be issued and an infringement fee as set out in Schedule 2 of the Transport Act 1962 applies (currently \$40).
21. In the Bylaw, a grass berm is defined as the area behind a kerb which is laid out in grass and may include a riverbank area. A grass verge is defined as the area of road, which is laid out in grass:
 - (a) Between the carriageway and a kerb; or
 - (b) Adjacent to the carriageway where there is no kerb and which may include a riverbank area.
22. A prescribed sign means any applicable traffic control device (such as a traffic sign or road marking) referred to in the Land Transport Rule: Traffic Control Devices 2004.
23. Clause 9(1) was drafted in this way because of sections 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004.

Traffic Control Devices Rule and Road User Rule

24. Sections 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004 provide that a road controlling authority must install regulatory signs to draw attention to a requirement, restriction or prohibition on road users when that road controlling authority has made a requirement, restriction or prohibition by bylaw (or other instrument) on a road under its control. A regulatory sign includes a parking sign.
25. The effect of this Rule is that whether or not a parking restriction or prohibition on a road is made under the Transport Act 1962 or the Local Government Act 2002, the Council must erect prescribed signs to draw attention to the restriction or prohibition. Section 12 of the Traffic Control Devices Rule 2004 sets out the general requirements for the way in which parking restrictions and prohibitions must be signed.

3 Cont'd

26. The Traffic and Parking Bylaw 2008 must be read in conjunction with the Land Transport (Road User) Rule 2004. Clauses 2.13 and 2.14 of the Road User Rule prohibit the *driving* of motor vehicles along a footpath and driving a motor vehicle on a lawn, garden, or other cultivation adjacent to, or forming part of, a road. At the time the Bylaw was made, Clause 6.2 of the Road User Rule 2004 stated that:

unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a road-way when it is reasonably practicable to do so on the road margin.

27. Road margin is defined as follows: "*includes any uncultivated margin of a road adjacent to but not forming part of either the roadway or the footpath (if any)*". So, parking on the road margin was allowed under this rule, but seemingly not cultivated margins, only uncultivated margins.
28. Clause 6.14 of the Road User Rule 2004 provides that a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a footpath or on a cycle path. There is no signage requirement in the Traffic Control Devices Rule 2004 for this clause. There were no provisions of the Road User Rule that prohibited the stopping, standing or parking of vehicles on lawns, gardens or other cultivated areas, which is why the Council included clause 9 in the Traffic and Parking Bylaw 2008.

Amendment to the Road User Rule and Council's submission on the Amendment

29. After the Bylaw came into force, Land Transport New Zealand (now part of the NZ Transport Agency) proposed various amendments to the Road User Rule 2004. One of the proposed amendments was that the Road User Rule would prohibit within urban traffic areas (ie areas subject to a speed limit of 50 kilometres per hour) parking on grassed areas or other cultivation forming part of a road, unless a road controlling authority indicated otherwise by signs or markings.
30. The Council made a submission on these proposed amendments. The Council's submission was that the recommended amendment should apply to urban areas with speed limits of 60 km per hour or lower and further clarification that off-roadway areas may include adjoining cultivated riverbanks. In its submission, the Council emphasised that there are many urban areas within Christchurch that are blighted by vehicles being parked on grass verges and other roadside cultivated areas. The Council argued that such parking thwarts the ability to manage parking effectively within urban areas and reduces the amenity for pedestrians and other users.
31. The Council also commented that Christchurch has many cultivated riverbanks adjacent to roads within its urban limits that are used for injudicious parking. Such parking causes damage to the grass. Vehicles, including trucks, often park in the same riverbank location causing rutting and a movement of soil and subsequent drainage issues. In most cases, Council is burdened with the cost of replanting grass and re-levelling soil in instances where soil movement has occurred. In extreme cases such parking causes stability issues for the river bank.

Final Form of Road User Rule Amendment

32. The NZ Transport Agency has now finalised the terms of the amendments to the Road User Rule and the amendments have been signed by the Minister of Transport. The amendments came into force on 1 November 2009. Clause 6.2 of the Rule has been revoked and a new clause inserted which provides as follows:

6.2 Parking vehicles off roadway

- (1) *A driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a roadway if he or she can stop, stand, or park it on the road margin without damaging ornamental grass plots, shrubs, or flower beds laid out or planted on the margin.*
- (2) *Subclause (1) does not apply if the road controlling authority provides signs or markings, or makes a bylaw, indicating that a rule different from the one in subclause (1) applies.*

3 Cont'd

33. Unfortunately, the NZ Transport Agency did not proceed with the clause as originally drafted (or amended as Council submitted), and this new clause raises a number of issues for the Council.

Damage to ornamental grass plots

34. Clause 6.2(1) appears to authorise drivers to stop, stand or park a vehicle on the road margin **so long as it does not** damage ornamental grass plots, shrubs, or flower beds laid out or planted on the margin. Therefore, if a vehicle is parked on a grass berm or verge (that is part of the road margin) the Council would need to be able to prove that the vehicle was **damaging** ornamental grass plots, shrubs, or flower beds laid out or planted on that margin before it could issue an infringement notice. The infringement fee for this offence is \$40 (or a maximum fine on summary conviction of \$1000).
35. The Council would also need to establish that the grass berm or verge that is being damaged is an ornamental grass plot laid out or planted on the margin. It is not immediately clear what is an ornamental grass plot that has been laid out or planted on the margin. "Ornamental grass plot" was a phrase used in the now revoked regulation 35 of the Traffic Regulations 1976. Regulation 35(1)(c) was similar to clause 6.2 as it provided that "*no person, being the driver or in charge of any vehicle, shall stop, stand, or park the vehicle....so as to cause or be likely to cause damage to ornamental grass plots, shrubs, or flower beds laid out or planted on the road, or contrary to any bylaw of the controlling authority*".
36. In *Nathan v Wellington CC* 7/11/90, Ellis J, HC Wellington AP236/90 the High Court was concerned with a charge of parking on a grass plot causing or likely to cause damage to the plot. The charge as drafted did not refer to "ornamental grass plots". The court held that the infringement notice did not therefore disclose any offence, unless inferred from the reference to regulation 35(1). Even with such an inference, there was no evidence brought that the grass was an ornamental grass plot, or that the conduct was likely to cause damage. The conviction entered by the Justice of the Peace was quashed by the High Court. Unfortunately there were no statements made by the Court as to what would amount to an ornamental grass plot.
37. The ordinary definition of "ornamental" means something which is used to adorn or decorate or beautify, and it seems clear that at least one of the purposes for planting and maintaining grass berms and verges is for the beautification of the surrounding area (as well as possible traffic safety/planning purposes).
38. Section 334 of the Local Government Act 1974 also allows the Council to lay out or plant "grass plots or flower beds or trees on any road", and prohibit traffic on any such plots or flower beds. It is also not clear whether all grass plots that the Council can lay out on a road under section 334 are the same thing as an "ornamental grass plot" under clause 6.2 of the Rule.
39. Taking a commonsense approach it appears that a grass berm or verge that has been planted by the Council and/or is maintained regularly, should come within the definition of an "ornamental grass plot". It is possible that the bigger a grassed area is, the less likely it comes within the definition of an ornamental grass plot. A grass verge which extends to a river bank area may not come within the term "ornamental grass plot". In addition self seeded or growing grass areas which the Council may only maintain sporadically are also not likely to be ornamental grass plots.

How the Council should deal with this amendment?

40. According to subclause (2), the Council is not able to rely on subclause (1) if the Council provides signs or markings, or makes a bylaw, indicating that a rule different from the one in subclause (1) applies.
41. Signs or markings could include parking signs and road markings that indicate parking on the roadway is allowed, although those signs/markings would not indicate any rules in relation to parking on the road margin. However, the Council's Traffic and Parking Bylaw clearly provides what is to happen, on at least some planted road margins.

3 Cont'd

42. Arguably, clause 9 of the Bylaw does provide a rule different from the one in subclause (1). This is because clause 9 of the Traffic and Parking Bylaw prohibits the stopping, standing or parking of a motor vehicle on a grass berm or verge, but only where prescribed signs have been erected to indicate the restriction.
43. If the Council left the Bylaw as it is, without amendment then it may not be able to make use of clause 6.2(1) of the Rule where there are no signs erected (and if signs are erected it would simply issue an infringement notice under the Bylaw clause).
44. To ensure that the Council can still issue infringement notices in any situation where the requirements of clause 6.2(1) are met, the Bylaw should be amended to provide that the Bylaw does not conflict with clause 6.2(1). This will make it clear that the Council would not be required to have signs erected in those situations.
45. However, the Council may still need to use clause 9 of the Bylaw in any situations which are not covered by clause 6.2(1), for example, where damage to the margin might not be caused by parking, but the Council wants to prevent people parking on the margin for other reasons (congestion, etc), or to cover grass berms or verges that are not laid out or planted as described (e.g. riverbanks, or self grown verges such as along QEII Drive or Halswell Road).
46. It should be noted that neither the amendment to the Rule nor the recommendations contained in this report will provide a completely effective enforcement regime to deal with vehicles parking on grass berms and verges. This is primarily due to evidential difficulties in proving that a particular vehicle caused damage to the berm/ornamental grass plot. Unless an officer or a member of the public witnesses the damage being caused by the particular vehicle, the owner of the vehicle may be able to claim that the damage was caused by another vehicle or means at another time.

OPTIONS

47. The Council has two practical options in this situation:
 - (a) Do nothing – which would mean the Bylaw would stay as it is, Council would only enforce parking on grass verges in accordance with the Bylaw, and would not be able to issue infringement notices or prosecute under clause 6.2(1) of the Rule; or
 - (b) Amend the bylaw to give the Council a wider range of enforcement options against those who park on grass verges and berms, through both the bylaw and the Rule.

The preferred option is (b) because it gives Council officers better enforcement options.

PART B - REPORTS FOR INFORMATION

4. ENVIRONMENT CANTERBURY UPDATE – DEVELOPMENT OF THE CANTERBURY REGIONAL LAND TRANSPORT STRATEGY 2011-2041

The Committee received a verbal update on the development of the Canterbury Regional Land Transport Strategy 2011-2041 from James Ryan (Environment Canterbury). Mr Ryan answered questions from the Committee on the Strategy.

The Committee thanked Mr Ryan for his presentation and **decided** to receive it for information.

26. 11. 2009

Regulatory and Planning Committee 19.11.2009

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5. INSPECTIONS AND ENFORCEMENT UNIT ANNUAL REPORT 2008/09

The Committee received a report outlining relevant issues regarding the 2008/09 Inspections and Enforcement Unit Annual Report. The Committee commended the professionalism of the Unit and its Annual Report.

The Committee **decided** to receive this report for information.

6. PLANNING ADMINISTRATION MONTHLY REPORT (APRIL TO SEPTEMBER 2009)

The Committee received a monthly report to provide information about resource consent applications received and processed by the Planning Administration and Subdivision teams. It contained information from April to September 2009.

The Committee **decided** to:

- (a) Receive this report for information.
- (b) Instruct staff to provide Planning and Administration reports to the Committee quarterly rather than on a monthly basis in the future.
- (c) Instruct staff to provide a quarterly update on the Liquor Licensing Authority and Building Consents to the Committee.

PART C - REPORT ON DELEGATED DECISIONS TAKEN BY THE COMMITTEE

7. DEPUTATIONS BY APPOINTMENT

Item 1. Prestons Road Proposed Plan Change 30:

Lauren Semple, Partner, Anderson Lloyd addressed the Regulatory and Planning Committee on recent developments in the proposed plan change, including outstanding issues from the 6 August 2009 Committee meeting.

8. RESOLUTION TO EXCLUDE THE PUBLIC

The Committee **decided** under section 48 of the Local Government Official Information Meetings Act to exclude the public at 10.05am on the grounds of section 7(2)(g).

The Committee **decided** to readmit the public at 10.35am.

The meeting concluded at 12.07pm.

CONSIDERED THIS 26TH DAY OF NOVEMBER 2009

MAYOR