

27. 10. 2011

15. FREEDOM CAMPING ACT 2011 RESOLUTION

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PURPOSE OF REPORT

1. This report is to advise the Council that the Freedom Camping Act 2011 ("the Act") came into force on 30 August 2011. The Act includes a transitional section under which the Council can pass a resolution in relation to its Parks and Reserves Bylaw 2008 ("the P&R Bylaw").
2. If the Council makes a resolution under the transitional section that would allow warranted officers to issue infringement notices for a camping offence in any reserve, in accordance with the P&R Bylaw.
3. The report explains the relevant section of the Act, the P&R Bylaw clause, the Council's experiences with freedom camping in reserves, and proposes a resolution if the Council wants to apply the transitional provision in the Act.
4. This report does not consider whether the Council should make a new Freedom Camping Bylaw under the Act. That issue will be dealt with in a separate report to Council.

EXECUTIVE SUMMARY

5. The background section to this report explains what the Act covers in further detail. The relevant provision for the purposes of this report is section 48, which provides that Council can make a resolution so that the camping offences in the P&R Bylaw can be enforced by way of an infringement notice (instant fine). The requirement for the Council to make a resolution is so that any prohibited camping areas are clearly identified for the public.
6. The Greenspace team have advised that there have been very few issues with freedom camping in reserves areas, so there may not be any need for the Council to make a resolution in relation to the P&R Bylaw. Isolated problems around Hagley Park and coastal areas have been managed by verbally advising people to move to designated campgrounds around the city. This is an appropriate approach to enforcement of such offences and would also be the initial approach taken by enforcement officers even if an offence under the P&R Bylaw could be enforced by an infringement notice.
7. Where there have been issues with freedom camping it has more often been on roads and carparks. Those areas are generally not reserves so are not covered by the P&R Bylaw. These areas will be considered in the report that will come to Council in April 2012, after further monitoring of freedom camping has been carried and for discussion with Council about whether a Freedom Camping Bylaw is needed.
8. Council should also note that the Act creates an offence in relation to depositing waste generated while freedom camping in a local authority area other than into a waste receptacle. This offence applies to all local authority areas (roads, reserves, and other public places), even if there is no bylaw in effect under the Act. It is also an offence to fail or refuse to leave a local authority when asked to do so by an enforcement officer (the enforcement officer must first reasonably believe an offence is being or will be committed before asking the person to leave). Council officers can enforce these offences even if no resolution is made in relation to the P&R Bylaw.
9. If the Council does wish to make a resolution then the most practical way to identify which reserves are prohibited camping areas is to set out the areas in reserves that are available for camping, because there are only two areas on reserves where camping is allowed (other than two leased camping grounds, which cannot be subject to the resolution). Those areas are the Duvauchelle Holiday Park on the Duvauchelle Reserve and the Pigeon Bay camping ground at the Pigeon Bay Reserve. Both of these camping areas are managed by Reserve Management Committees. Camping is prohibited in all other reserves unless special permission is given.

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10. If a resolution is made allowing staff to issue infringement notices for a breach of the P&R Bylaw, this should not increase enforcement costs, and may reduce costs in the event that the breach was sufficiently serious that a prosecution would ordinarily have been contemplated (although to date there have been no prosecutions brought under the P&R Bylaw, as non-regulatory approaches have worked).
11. If the Council decides it should erect more signs to indicate prohibitions or restrictions then there will be a cost for that, but the Council is not required by the Act to erect any signs. It only has to give public notice of its resolution.

LEGAL CONSIDERATIONS

12. The legal considerations regarding the operation of the Act and the Bylaw clauses, and the ability to make a resolution are set out in the background section below.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

13. Aligns with the Key Community Outcome of A City of People who Value and Protect the Natural Environment

ALIGNMENT WITH STRATEGIES

14. Litter Strategy: "Christchurch is New Zealand's cleanest city, with citizens who are responsible for their own litter and do not tolerate others littering."

CONSULTATION FULFILMENT

15. Staff in the Council's Greenspace team, Strategy & Planning Group and the Inspections and Enforcement Unit have been consulted in the preparation of this report. The **attached** information paper was prepared by the Strategy & Planning Group.
16. Consultation on the Bylaw and clauses 10 and 11 of the Bylaw occurred in 2008 using the special consultative procedure. A resolution made by the Council would provide an alternative option for the Council to enforce any breach of the Bylaw. It does not change what is already in the Bylaw. As noted above, Council staff also use a graduated response model to enforcement in any situation. A discussion with offenders and a warning is the first step.

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STAFF RECOMMENDATION:

That the Council resolve:

- (a) To accept this report, noting that a further report on the monitoring of freedom camping both in reserves and on roads and other areas, and on whether a Freedom Camping Bylaw is needed, will be presented to Council by the end of April 2012;
- (b) If the Council wishes to make a resolution in respect of clauses 10 and 11(1)(b) of the Parks and Reserves Bylaw 2008, for the purposes of section 48 of the Freedom Camping Act 2011, that it make the resolutions in (c), (d) and (e).
- (c) To prohibit camping in all Council reserves except:
 - (i) in the following areas of the following reserves ("reserve camping areas"):
 - Duvauchelle Holiday park area in the Duvauchelle Reserve
 - Pigeon Bay camping ground in the Pigeon Bay Reserve
 - (ii) when permission has been given under clause 10(1)(b) of the Parks and Reserves Bylaw 2008.

"Reserve" is defined in the Christchurch City Council Parks and Reserves Bylaw 2008, as follows:

- "(a) means any land which is vested in or under the control of the Council and which is set aside for public enjoyment as a reserve, park, garden, or greenspace area, whether or not that land has been vested as a reserve under the Reserves Act 1977; but
 - (b) does not include any reserve, park, garden, or greenspace area or part of such a reserve, park, garden, or greenspace area which is subject to a lease that has been granted by the Council under the Local Government Act 2002 or the Reserves Act 1977."
- (d) That camping in any reserve camping area is allowed only if any fee set by the Council for camping in that reserve camping area has been paid.
 - (e) That public notice be given of resolutions (d) and (e), noting that they were made under section 48 of the Freedom Camping Act 2011 and will be in force until 29 August 2012.

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BACKGROUND (THE ISSUES)

17. The Freedom Camping Bill had its first reading in Parliament on 9 June 2011, submissions on the Bill closed on 29 June 2011, and it came into force on 30 August 2011.
18. Council staff prepared a draft submission on the Bill, but as the Council Submissions Panel was unable to meet before the submission was due, the chair of the Panel directed that the submission be given to the Select Committee as a Council staff submission. Some of the submissions made were adopted and some were not.

What the Act covers

19. The Act covers freedom camping on both local authority areas¹ and Department of Conservation land. Some provisions in the Bill are only relevant to the Department of Conservation. In brief, the Act, as relevant to the Council, provides that:
 - The primary method for achieving the Bill's purpose (which is primarily about addressing the negative effects of freedom camping) is to create an infringement regime in relation to freedom camping and related activities, with a nationally consistent infringement fee of \$200 (this fee can be adjusted by regulation);
 - The Act generally permits freedom camping unless it is restricted or prohibited through various means. It does not target back country campers, or motorists who need to pull over to the side of the road to rest;
 - The Act allows local authorities to make bylaws specifying the areas in which freedom camping is prohibited or restricted, and the conditions of any restriction. Local authorities may not absolutely prohibit freedom camping in all local authority areas.
 - Bylaws must be made using similar processes to those set out in the Local Government Act 2002, including using the special consultative procedure, and undertaking reviews. The Act also specifies that the Council must determine that the bylaw is necessary to protect the area and/or protect the health and safety of people who visit the area and/or to protect access to the area. Making a bylaw must be the most appropriate and proportionate way of addressing the perceived problem in the area, and must be consistent with the New Zealand Bill of Rights Act 1990.
 - It does not appear that local authorities have to erect signs in places where freedom camping is restricted or prohibited. By way of comparison, the Department of Conservation do not have to make bylaws in relation to their land but instead are required to erect signs. There are no similar provisions requiring that signs be erected in relation to local authority land. However, the Council is not prevented from erecting signs. Signs may be a useful compliance tool, particularly in high use areas, as they will more clearly inform the public of any restrictions or prohibitions in relation to camping.
 - As well as creating an offence of freedom camping in any area where freedom camping is not permitted, the Act also creates an offence in relation to depositing waste generated while freedom camping in a local authority area other than into a waste receptacle. This offence applies to all local authority areas, and even if there is no bylaw in effect under the Act. It is also an offence to fail or refuse to leave a local authority when asked to do so by an enforcement officer (the enforcement officer must first reasonably believe an offence is being or will be committed before asking the person to leave).

¹ A local authority area is defined as land within the local authority's district that is controlled or managed by the local authority under any Act. This would include all roads under Council's control, parks and reserves, and other public places.

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- The depositing waste offence provision is similar to littering provisions in the Litter Act 1979. A significant difference, however, is that as well as the ability to issue infringement notices to the person who appears to have committed the offence, where a vehicle is used in the commission of the offence, it can be attached to the vehicle or sent to the registered owner of the vehicle. Providing for infringement notices to be given to the owner of any vehicle involved in the offence means any enforcement necessary will be much easier than finding the person who deposited the waste/litter. However, the Council will have to show that the waste was generated while freedom camping.
 - There are provisions in the Act relating to rental vehicles. These mean the Council would still be paid any infringement fees in a situation where a vehicle involved in the commission of an offence has been rented. There are also provisions relating to seizing and impounding vehicles involved in the commission of an offence that are similar to those the Council can exercise under the Local Government Act 2002.
20. The key provision of the Act for the purposes of this report is the transitional provision that means a breach of many current local authority camping-related bylaws become infringement offences. The transitional provisions authorise councils to issue infringement notices for a period of 1 year, beginning on the day the Act commences (therefore the expiry date is 29 August 2012). If a Council wants to continue using the infringement offence regime after that date it would have to amend that bylaw in accordance with the requirements of the Act or make a new bylaw under the Act to cover the same areas and/or any new areas.

The Council's recent involvement with freedom camping issues

21. The Council has previous experience with freedom camping related issues. In its Public Places and Signs Bylaws of 1992 and 2003 there was a provision that prohibited residing on the road without consent from the Council². A similar provision was consulted on in the bylaw review in 2008 and the Council ultimately resolved not to continue with any such prohibition in the Public Places Bylaw 2008. It considered that any problems that might arise could be dealt with through the special use areas provision in the Bylaw. A resolution was made under the special use area clause in early 2010 to make the area around Cranmer Square a no camping zone.
22. The attached information paper outlines the history of freedom camping issues in Christchurch and the steps taken to address them, including the development of the Freedom Camping Management Plan. The Plan provided for a Stage One/Social Marketing approach to freedom camping for the 2010/2011 summer season, which included the monitoring of a number of sites to get an indication of the level of activity. Monitoring was to continue until April 2011, after which a report was to be presented to Council. However monitoring ceased in February 2011 as a result of the 22 February earthquake.
23. It is proposed that monitoring should begin again for the 2011/2012 summer season (ie from December 2011 to April 2012) in the same areas as the previous year, in accordance with the Freedom Camping Management Plan. Staff will report the results of the further monitoring to Council in May 2012. The report will include a discussion about whether a new Freedom Camping Bylaw under the Act is needed.

The transitional provision in the Act and the P&R Bylaw

24. As noted, the Act includes a transitional provision so that breaches of current camping-related bylaws that local authorities already have in place will be infringement offences for one year from 30 August 2011. The Council's P&R Bylaw is listed in Schedule 4 of the Act, which means the Council must make a resolution so that any prohibited camping areas are clearly identified, before it can issue infringement notices for freedom camping breaches in its reserves. That is what would be required if a new bylaw was made under the Act.

² "No person shall camp or reside temporarily on any road, whether in a vehicle or otherwise, without the consent of the Council and except in accordance with any conditions imposed by that consent."

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25. The relevant requirement is set out in section 48(3) of the Act:

“48 Infringement offences for camping-related local authority bylaw provisions specified in Schedule 4

- (1) A breach of a bylaw provision specified in Schedule 4 is an infringement offence.**
- (2) The infringement fee for an offence referred to in subsection(1) is \$200.**
- (3) However, subsection (1) applies only if the local authority responsible for making the bylaw containing the provision, -**
 - (a) by resolution, -**
 - (i) describes the area or areas where camping is prohibited under the bylaw provision; or**
 - (ii) specifies the conditions or restrictions on camping that apply, if the bylaw provision contemplates conditions or restrictions applying; and**
 - (b) gives public notice of the matters in paragraph (a).”**

26. Clauses 10 and 11(1)(b) of the P&R Bylaw are referred to in Schedule 4 of the Act. These clauses provide:

"10. CAMPING

- (1) No person may camp in a reserve unless:
 - (a) it is in an area specifically set aside by the Council for camping, and the person has paid any camping fees set by the Council from time to time; or
 - (b) that person has obtained the prior written permission of an Authorised Officer to do so.

11. TENTS, BOOTHS ETC

- (1) No person may put up or erect any stall, booth, tent, (excluding any casual shade tent) or structure of any kind in a reserve unless that person has:
 - (a) obtained the prior written permission of an Authorised Officer to do so; and
 - (b) paid any applicable fees set by the Council from time to time.
- (2) To avoid any doubt, if a person complies with clause 10, that person is not required to comply with this clause."

27. The restrictions in the above clauses relate to activities in a reserve. The P&R Bylaw includes a wide definition for "reserve":

"(a) means any land which is vested in or under the control of the Council and which is set aside for public enjoyment as a reserve, park, garden, or greenspace area, whether or not that land has been vested as a reserve under the Reserves Act 1977; but

(b) does not include any reserve, park, garden, or greenspace area or part of such a reserve, park, garden, or greenspace area which is subject to a lease that has been granted by the Council under the Local Government Act 2002 or the Reserves Act 1977."

28. Camping grounds on reserves that are leased to other parties are therefore not subject to the P&R Bylaw and will not be covered by a resolution, if one is made by the Council. There are two such reserves: the Spencer Park campground and South Brighton Park campground.

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29. In the Council's experience, since the P&R Bylaw was passed, there have been very few problems encountered with campers on parks and reserves (in non-campground areas). Isolated problems around Hagley park and coastal areas have been managed by verbally advising people to move to designated campgrounds around the city.

Enforcement of offences

30. Council officers will need to be warranted to issue infringement notices under the Act for the offences that are provided in the Act irrespective of whether there is a bylaw (depositing human waste or other waste on local authority land), and if the Council makes a resolution in relation to the P&R Bylaw (or if, in future, it enacts a Freedom Camping Bylaw).
31. The model applied by the Council's enforcement officers in relation to offences is the Graduate Response Model (GRM), which is used by the Police particularly in the area of liquor enforcement. The GRM recognises that compliance with legislation can be achieved through dialog as well as enforcement action when breaches occur.
32. In the context of the enforcement of the Act the desired outcome can be achieved by taking a stepped approach, and often a first warning is enough without taking any direct action. Applying a GRM approach would mean that the issuing of an infringement notice would be a last resort not the first. Repeated breaches, where infringement notices have also been issued may then result in a prosecution rather than a further infringement notice.
33. The GRM approach was successfully applied in the enforcement of the special use "no camping" area around Cranmer Square. The GRM approach would also be applied in relation to any breach of the P&R Bylaw, even if a resolution is made to allow infringement notices to be issued.