

20. "OCCUPY CHRISTCHURCH" CAMPERS IN SOUTH HAGLEY PARK

General Manager responsible:	General Manager City Environment Group, DDI 941-8608
Officer responsible:	Manager Legal Services Unit
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PURPOSE OF REPORT

1. The purpose of the report is to recommend a means for the Council to stop people from camping unlawfully in South Hagley Park.

EXECUTIVE SUMMARY

2. Campers have been occupying a portion of South Hagley Park near to the intersection of Riccarton Avenue and Hagley Avenue since approximately 15 October 2011. The camping is associated with the "Occupy" protest movement.
3. South Hagley Park is vested in the Council as a recreation reserve. The purpose of a recreation reserve is to provide areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and retain open space (section 17 of the Reserves Act 1977).
4. The Christchurch City Council Parks and Reserves Bylaw 2008 provides that no person may, without the prior written permission of an authorised Council officer:
 - Place a sign in a reserve (clause 6(1)(d)); or
 - Camp in a reserve unless in an area set aside by the Council for camping (clause 10); or
 - Put up a tent or structure of any kind in a reserve (clause 10).
5. Breach of the bylaw is an offence under the Local Government Act 2002. Section 164 of that Act provides that a Council enforcement officer can seize and impound property that is not on private land if:
 - (a) the property is materially involved in the commission of an offence; and
 - (b) it is reasonable in the circumstances to seize and impound the property; and
 - (c) before seizing and impounding the property, the enforcement officer directed the person to stop committing the offence, and told them that if they do not stop their property could be seized, and gave them a reasonable opportunity to stop. However, if the property is not in the possession of a person at the time, the enforcement officer does not have to give this notice.
6. The campers in Hagley Park have not been authorised by a Council officer. They are committing an offence.
7. Council staff have met with the Occupy Christchurch campers. This occurred on 15 November 2011. Officers told the group about the Bylaw and asked them to remove their campsite from the park. The group's spokesperson said they would not be moving.
8. Protesters associated with the "Occupy" movement have camped in public spaces in many cities, including Auckland, Wellington and Dunedin.
9. In Auckland, the campers were in Aotea Square. The Auckland City Council applied to the High Court for a permanent injunction to stop the campers from breaching a public places bylaw which prohibited (among other things) camping and structures. The campers opposed this. Their legal argument was that bylaws cannot be enforced if they are inconsistent with the New Zealand Bill of Rights Act 1990. They argued that the bylaw was in breach of the freedoms of expression, peaceful assembly and freedom of association. Section 5 of the New Zealand Bill of Rights Act 1990 provides that the rights and freedoms contained in that Act "...may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

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10. The High Court decision was that the bylaw restricting occupation of public space by camping did not breach the Bill of Rights. "*The Bill of Rights does not contain an unrestrained right to camp where one wishes*". Limitations on camping in public places in the interests of citizens generally are justified. "*There is no fundamental human right to camp in a public place without a permit*".
11. The Court issued the injunction. Enforcement officers removed the tents with Police assistance.
12. The Wellington City Council then acted in reliance on its similar bylaw. The campers were in breach of the bylaw. The Council (with police support) acted under section 164 of the Local Government Act 2002 to seize and detain property involved in the commission of an offence.
13. Officers have considered the options available to the Council for removing camping from Hagley Park. The options include issuing a trespass notice. However, that was ineffective in Dunedin as the Police declined to enforce the trespass notice. Other options include seeking an injunction from the District Court or bringing a prosecution for breaches of the Local Government Act 2002 or Reserves Act 1977. Officers do not recommend those options, due to the delay and costs of defended hearings.
14. Seizing and impounding property involved in the commission of the offence of breaching the bylaw is likely to be an efficient and effective way to end the offending. Seizing property under section 164 of the Local Government Act 2002 can proceed immediately after the Council approves this action. It does not require any Court authorisation. If the seized tents are replaced by new tents at this or any other site covered by the bylaw, the new ones can also be seized.
15. Officers would ensure that there is support from the Police for any action taken. The Council's warranted officers can remove property but cannot detain people. The Police would need to be present in case that detention is necessary.
16. The campers could seek damages for removal of their property but this would not inhibit the initial removal of the tents. Officers consider that there is a low risk of a successful claim for damages.
17. Council officers have received complaints about the campers from members of the public. Moreover, the Canterbury District Health Board has expressed considerable concern to the Council. The CDHB has provided to the Council a record of security incidents involving occupants of the campsite. Correspondence sent to the Council from the CDHB General Manager Corporate Services says:
 - *Persons seen originating from the Tent City have, on many occasions, verbally and physically abused security, staff, and patients on the premises of Canterbury District Health Board (Christchurch Hospital). This has resulted in Trespass notices being issued and Police being called. One person has been arrested for breaking Trespass notice, one person arrested for assault.*
 - *Approximately 25 people have been issued trespass orders.*
 - *Several vehicles have been broken into in the vicinity of the Tent City. Belongings have been removed from the vehicles. One item of equipment stolen was located via GPS tracking, as being inside the cluster of tents.*
 - *A person was observed suspiciously checking vehicles in the Horticultural carpark, when approached, the person ran towards the Tent City. This person has been observed several times walking a dog within the tent cluster.*
 - *A female staff member of Christchurch Hospital was approached in a threatening way by a semi naked man near the Tent City. He was restrained by two or three people.*

The level of problems caused by the Tent City, and the people within, is extremely unacceptable to the Canterbury District Health Board (Christchurch Hospital). Staff, patients and visitors are being abused verbally and physically, and generally made to feel very uncomfortable. There has been an increase in crime in the area. It is also causing a drain on resources as Security teams, paid for by CDHB, have had to spend more time and effort monitoring the situation, taking them away from other areas. Security are escorting hospital staff to their vehicles at night, because the staff are very frightened.

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We would welcome the speedy removal of the tents and people from the corner of Hagley and Riccarton Avenues.

The District Commander of the New Zealand Police has recorded that Police have attended the area within 200 metres of the tent site 153 times during the occupation, including in response to requests for Police assistance from Occupy Christchurch residents. He had not at the time of writing been able to distinguish attendances relating to the tent site from those relating to other sites in the area. However, he does consider that *"Those attendances, and the regular policing of those occupying the site, have absorbed considerable Police resources which would otherwise have been deployed elsewhere"*.

FINANCIAL IMPLICATIONS

18. There may be a cost of engaging a security firm to assist.

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

19. Yes.

LEGAL CONSIDERATIONS

20. The legal considerations have been described above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

21. Yes.

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

22. Yes.

ALIGNMENT WITH STRATEGIES

23. Yes.

Do the recommendations align with the Council's strategies?

24. The recommendations are consistent with The Public Open Space Strategy 2010-2040, which describes Hagley Park as part of *"...an outstanding public open space framework for the central and western parts of the Central City with high natural and amenity and recreation values"*. A guiding principle of the Strategy is that *"The Council is committed to protecting, enhancing and maintaining the public open space network of Christchurch District for residents and visitors and for environmental and cultural wellbeing"*.

CONSULTATION FULFILMENT

25. The Council is not required to consult before enforcing its bylaws. However, officers have informed the campers present in November that they are in breach of the bylaw, have asked them to cease camping, and will give any notices required under section 164 of the Local Government Act 2002.

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STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Enforce the Christchurch City Council Parks and Reserves Bylaw 2008 in relation to campers in South Hagley Park and in any other reserve or park under the administration or control of the Council; and
- (b) Endorse officers acting under section 164 of the Local Government Act 2002 to seize and impound property in Hagley Park, or in any other reserve, that is involved in the commission of the offence of breach of the Christchurch City Council Parks and Reserves Bylaw 2008; and
- (c) Note that Council staff will work collaboratively with the police.