

CHRISTCHURCH CITY COUNCIL AGENDA

THURSDAY 22 MARCH 2012

9.30AM

**COUNCIL CHAMBER, CIVIC OFFICES,
53 HEREFORD STREET**

CHRISTCHURCH CITY COUNCIL

Thursday 22 March 2012 at 9.30am
in the Council Chamber, Civic Offices, 53 Hereford Street

Council: The Mayor, Bob Parker (Chairperson).
Councillors Peter Beck, Helen Broughton, Sally Buck, Ngaire Button, Tim Carter, Jimmy Chen,
Barry Corbett, Jamie Gough, Yani Johanson, Aaron Keown, Glenn Livingstone, Claudia Reid and
Sue Wells.

ITEM NO	DESCRIPTION	PAGE NO
1.	APOLOGIES	
2.	CONFIRMATION OF MINUTES - COUNCIL MEETING OF 23.2.2012 AND 8.3.2012	
3.	DEPUTATIONS BY APPOINTMENT	
4.	PRESENTATION OF PETITIONS	
5.	ELECTION OF ONE MEMBER OF THE SPREYDON HEATHCOTE COMMUNITY BOARD	
6.	REPORT OF A MEETING OF THE RICcarton/WIGRAM COMMUNITY BOARD : MEETING OF 14 FEBRUARY 2012	
7.	NOBLE VILLAGE SUBDIVISION	
8.	REPORT OF THE REGULATORY AND PLANNING COMMITTEE : MEETING OF 29 FEBRUARY 2012	
9.	REPORT OF THE REGULATORY AND PLANNING COMMITTEE : MEETING OF 13 MARCH 2012	
10.	ARC INNOVATION LIMITED – DEED OF NOVATION	
11.	REPORT OF THE HAGLEY/FERRYMEAD COMMUNITY BOARD: MEETING OF 14 DECEMBER 2011	
12.	CHAIRPERSONS REPORT OF A MEETING OF THE HAGLEY/FERRYMEAD COMMUNITY BOARD: MEETING OF 14 MARCH 2012	
13.	NORTH HAGLEY PARK - CONTINUATION OF A REDUCED-SIZE CHRISTCHURCH EVENTS VILLAGE	
14.	PROPOSED AMENDMENTS TO URBAN DEVELOPMENT STRATEGY IMPLEMENTATION COMMITTEE REPRESENTATION	
15.	PLAN CHANGE 59 ST MARTINS NEW WORLD – FINAL APPROVAL	
16.	REPORT OF THE HERITAGE AND ARTS COMMITTEE: MEETING OF 7 MARCH 2012	
17.	BROTHELS LOCATION AND SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES BYLAW	
18.	VBASE LTD SUPPLEMENTARY REPORT	
19.	CEO PERFORMANCE REVIEW AND REMUNERATION SUBCOMMITTEE 7 MARCH 2012 - MINUTES	
20.	"OCCUPY CHRISTCHURCH" CAMPERS IN SOUTH HAGLEY PARK	

COUNCIL 22. 3. 2012

ITEM NO	DESCRIPTION	PAGE NO
21.	NOTICES OF MOTION	
22.	RESOLUTION TO EXCLUDE THE PUBLIC	

COUNCIL 22. 3. 2012

1. APOLOGIES

2. CONFIRMATION OF MINUTES - COUNCIL MEETING OF 23.2.2012 AND 8.3.2012

Attached.

3. DEPUTATIONS BY APPOINTMENT

3.1 Colin Stokes – Item 6 and 7 (Noble Investment Village)

3.2 Mike Mora, Chairperson Riccarton/Wigram Community Board – Item 6 and 7 (Noble Investment Village)

4. PRESENTATION OF PETITIONS

COUNCIL 22. 3. 2012

5. ELECTION OF ONE MEMBER OF THE SPREYDON/HEATHCOTE COMMUNITY BOARD

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Democracy Services Manager
Author:	Clare Sullivan, Electoral Officer

PURPOSE OF REPORT

1. The purpose of this report is to seek approval for the early processing of the returned voting documents used at the election of a member of the Spreydon/Heathcote Community Board, to be held on Friday 11 May 2012. A decision is also sought as to the order in which the candidates' names are to be shown on the voting documents used at that election.

EXECUTIVE SUMMARY

Early Processing

2. Mike Thorley resigned as a member of the Spreydon/Heathcote Community Board on 20 February 2012. This created an extraordinary vacancy which, as it is more than 12 months before the next triennial election, under s117(1) of the LEA 2001 must be filled by an election.
3. Nominations close on Thursday 22 March 2012 and the voting period will be from 16 April 2012 to 12 noon on Friday 11 May 2012.
4. Section 79 of the Local Electoral Act 2001 permits a local authority to process (but not count) returned voting documents over the voting period.
5. Early processing of voting documents was introduced for the 1998 Christchurch City elections (but restricted to the 84 hours before the close of voting) and was used very successfully throughout the country. Because of the success of early processing in 1998 and the benefits which early processing provides, the early processing period was subsequently increased to the entire three week voting period now provided under the current legislation. The immediate benefit of adopting early processing is that much, if not all, of the cumbersome and time-consuming task of extracting and checking the voting documents is undertaken progressively over the three week voting period (under strict security and under the supervision of a Justice of the Peace). This means a quicker and more accurate result can be achieved on polling day.

Order of Candidates' Names on Voting Documents

6. Clause 31(1) of the Local Electoral Regulations 2001 allows the Council to decide whether the names are to be arranged on the voting documents in alphabetical order of surname, pseudo-random order or random order. In the absence of any Council resolution approving another arrangement, the candidates' names must be arranged in alphabetical order of surname.

7. The features of each arrangement are described below:

(a) **Arrangement 1 - Alphabetical Order of Surname**

This is the order which was used for all local authority elections prior to 2004, and is self-explanatory.

(b) **Arrangement 2 - Pseudo-Random Order***

Under this arrangement, the candidates' names for each issue are placed in a hat (or similar receptacle) mixed together, and then drawn out of the receptacle, with the candidates' names being placed on all voting documents for that issue in the order in which they are drawn. (*Note: Although the term "pseudo random order" is used in the Local Electoral Regulations to describe this arrangement, this is a somewhat imperfect description, in that the term "pseudo random" is understood by mathematicians and/or information technology specialists to have a different meaning.)

5 Cont'd

(c) **Arrangement 3 - Random Order**

Under this arrangement, the names of the candidates for each issue are shown in a different order on each and every voting document, utilising software which permits the names of the candidates to be laser printed in a different order on each paper.

This is the order which was used for all the issues included in the voting documents used for the 2010 and previous Christchurch City elections, ie:

- Election of Mayor
- Election of Councillors
- Election of Community Board Members.

FINANCIAL CONSIDERATIONS

8. The cost of printing the voting documents employing Arrangement 1, Arrangement 2 or Arrangement 3 will be identical. Thus, there will be no additional costs should random order be chosen for the issue being contested.

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

9. Costs for the election are estimated to be around \$90,000, although this will depend on the voter turn-out. Staff estimate that most of these costs are likely to be able to be absorbed within current budgets.

LEGAL CONSIDERATIONS

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

10. The early processing of the returned voting documents is provided for in section 79 of the Local Electoral Act 2001 and clause 101 of the Local Electoral Regulations 2001.
11. The ability to choose between alphabetical order of surname, pseudo-random order or random order for arranging the candidates' names on the voting documents is provided for in clause 31(1) of the Local Electoral Regulations 2001.
12. The regulations provide that if a local authority has determined that pseudo-random order or random order is to be used, the electoral officer must state, in a public notice required to be given, the date, time and place at which the order of the candidates' names will be arranged. Any person is then entitled to attend while the arrangement is in progress.

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?

13. Yes. Democracy and Governance - public participation.

ALIGNMENT WITH STRATEGIES

14. Not applicable.

CONSULTATION FULFILMENT

15. Not required.

COUNCIL 22. 3. 2012

5 Cont'd

STAFF RECOMMENDATION

It is recommended:

- (a) That the returned voting documents for the election of one member of the Spreydon/Heathcote Community Board be processed during the voting period in accordance with section 79 of the Local Electoral Act 2001, the Local Electoral Regulations 2001 and the Society of Local Government Managers' Code of Good Practice for the Management of Local Authority Elections and Polls.
- (b) That the names of the candidates for the election be arranged in random order.

**6. REPORT OF A MEETING OF THE RICCARTON/WIGRAM COMMUNITY BOARD :
MEETING OF 14 FEBRUARY 2012**

Attached.

7. NOBLE VILLAGE SUBDIVISION

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Resource Consents and Building Policy Manager
Author:	John Higgins, Manager Resource Consents

PURPOSE OF REPORT

1. This report has been prepared in response to the following Riccarton/Wigram Community Board resolution of 14 February 2012:

“That the Riccarton/Wigram Community Board urgently request that the Christchurch City Council call for a judicial review of the process for the granting of the Noble Village Subdivision original consent and the subsequent variation RMA92009135.”
2. The purpose of this report is to provide background to matters to assist in informing Council on making a decision on the Community Board’s resolution on a judicial review of the subdivision consent and variation.
3. Separately in the public excluded section of this meeting there is attached legal advice to the Council regarding the Board’s recommendation for a judicial review. As Councillors will be aware from the many emails they have received from members of the public there are a number of detailed issues that have been raised regarding this subdivision. This report will focus on the issues regarding the Board’s recommendations and provide background information below to give context to the Board’s recommendation as there was no staff advice before the Board when it passed its resolution.

EXECUTIVE SUMMARY

4. In August 2006 a final decision was issued by the Environment Court in relation to a reference on the notified Christchurch City Plan. This decision established the Living G (Yaldhurst) Zone which included a set of rules and an Outline Development Plan.
5. In May 2009 land use and subdivision resource consents were granted by the Consent’s Resource Management Officer Subcommittee to Noble Investments Limited (NIL) for the land at 473-475 Yaldhurst Road, which is situated within the Living G (Yaldhurst) zone, for the creation of 304 residential lots. Physical works commenced on the site in the latter part of 2009.
6. In addition to land use and subdivision consents granted from the Council in 2009, NIL was also required to obtain approvals from relevant landowners to enter onto their land to carry out physical work in terms of those subdivision and land use consents. For this reason, staff understand that NIL has entered into contracts with adjoining landowners, which is not uncommon, to enable the subdivision to proceed.
7. NIL applied for a variation to the subdivision consent in December 2009.
8. Complaints were received by the Council from neighbouring landowners in August 2010, that NIL was carrying out physical works in reliance of the variation application before the application had been considered by the Council. Unfortunately it was not until April 2011 that NIL was required by the Council to stop physical works that were in accordance with the variation application. The General Manager Regulation and Democracy Services has publicly apologised in October 2011 for this lapse in the Council staff processes that enabled unauthorised work to be continued for some eight months from August 2010 until April 2011.
9. The variation application was considered and granted by an independent commissioner in July 2011. (notification and substantive decisions are attached at **Attachment 1 and 2**). The commissioner held a meeting where the parties involved were given limited speaking rights. At the meeting with the commissioners the neighbouring landowners were represented by a solicitor and traffic engineer. Plans of the subdivision layout approved as at July 2011 are attached at **Attachment 3**.

COUNCIL 22. 3. 2012

7 Cont'd

10. Due to further concerns being raised, a legal review of the July 2011 decision was undertaken by an in-house solicitor. That review did not consider there were grounds available for the Council to initiate a judicial review of the decision.
11. Initially the concerns being raised by residents related to the width of the spine road (and as a consequence no dedicated cycle lanes); queue space for residential units on the side lanes; and site sizes.
12. Following the commissioner's decision those concerns were expanded to include the accuracy of information provided to the commissioner.
13. The concerns continued to remain and following a deputation to the Council a resolution was passed to hold a public workshop. This public workshop was held in October 2009 and chaired by Deputy Mayor Ngaire Button. A subsequent public meeting was organised and chaired by independent facilitator, Gay Pavelka in January 2012. A number of action items resulted from this meeting which are attached at **Attachment 4**. A staff update is also provided with respect to those action items.
14. Subsequent to the meetings above, another issue has been raised by residents relating to the widening of the State Highway on Lot 22 (land owned by neighbouring properties not by NIL). Advice has been given that for NIL to undertake physical works on private land they must obtain landowner approval. As such the issue is a civil matter and not one that Council can resolve. On this point it needs to be remembered that any statutory approval by the Council, be it a land use consent, a subdivision consent or a building consent is never an approval for access to private land. The consents granted by the Council are only for the purpose of the particular statute they are granted under. Often there can be the need to obtain other approvals (from other landowners or another statutory body, (e.g. DOC) before a project can proceed. Such access approval needs to be separately obtained by the person making the application to the Council. Staff understand that with this subdivision separate landowner consents are required and a question as to whether such consents have been obtained has arisen with regard to intersection work by NZTA on Yaldhurst Road which the subdivider will need to resolve.
15. The Council deals with many subdivision approvals each year (including others where the subdivision consent has not been in accordance with an outline development plan in the City Plan) and there is nothing different about this subdivision. A number of statements (some very close to being defamatory of individual staff) have been made by third parties to Councillors in relation to this particular subdivision approval. Below are a number of these third party statements and the staff's response to them:
 - (a) *It was the council that permitted the gross departures from the City Plan rules, including "key elements" set by the Environment Court, by allowing the subdivision to be constructed without a resource consent.*

While the Environment Court set this part of the City Plan, this is not an uncommon situation where the City Plan when notified was appealed. In this particular case, an urban zoning was sought by a group of developers. In the end, the Environment Court agreed the zoning should be urban subject to an outline development plan and a number of rules. As with just about any part of the City Plan, there is provision for a resource consent to be applied for to depart from the rules. Council process around 1,500 applications each year for this very reason. Each application is assessed on its merits. The reasons why resource consent was granted in this case will be discussed below but are outlined in detail in the Commissioner's July 2011 decisions (attached).

7 Cont'd

It has been accepted previously that the developer proceeded with unconsented work while the variation was being processed. Council processing staff had knowledge of this and advised that any work outside the original subdivision approval was undertaken completely at the developer's risk. The reason the developer sought to continue was due to availability of contractors. The processing of the variation was protracted due to a combination of outstanding information and the earthquakes. Works aligned with the original subdivision approval were allowed to continue as they were considered to be consented works. It is accepted that unconsented works should not have been allowed to occur. Since the unconsented works were stopped, the variation was progressed and a course of action which would ensure a fair and robust process going forward.

- (b) *The commissioner was used afterwards as a puppet and given corrupt, flawed and false "evidence" to retrospectively consent the illegal works.*

Because concerns were raised about Council staff involvement in the processing of the application it was therefore decided that outside consultants be used so as there would be a high degree of independence from the Council.

For the planning side, Mr Graham Taylor a director at Resource Management Group was engaged. He was employed by Council some 15 years ago but is now a very experienced planning consultant. For the traffic engineering, Ms Shelley Perfect was engaged. She is a Senior Traffic Engineer employed by Opus International Consultants. She has never been an employee of Council. An independent Commissioner from Auckland was also employed. He is an experienced RMA Barrister.

All of the information Council had was made available to the consultants and commissioner. The commissioner also held a meeting where members of the public their solicitor and traffic engineer were able to make submissions to the commissioner. This is an opportunity where they were able to inform and raise concerns about the variation to the commissioner.

- (c) *The two other major developers, Delamain and Enterprise, party to the Environment Court agreement and ruling also opposed the gross departures, not just "some residents". It was the entire community that opposed and was treated with contempt by the council.*

The Council have no information that the other major developers are opposed to the variation. We have only heard once from one of the developers who signalled that while they had been approached by Mr Stokes they would not be attending the original workshop.

- (d) *The bad precedent set is that it allows council staff to override the City Plan, as they can eliminate those adversely affected just by saying they aren't affected even when they clearly are.*

As discussed above, the Resource Management Act provides a process to depart from rules in the City Plan. This is the resource consent process. Every resource consent is a departure from the City Plan. When the Resource Management Act was made requiring the City Plan, Parliament realised a City Plan could not contemplate every situation on an individual property that would arise during the life of the Plan. So Parliament provided for resource consent in the RMA that could 'depart' from the plan's rules for particular circumstances. Such "departures" have been part of planning in New Zealand for at least 35 years.

Section 95 of the RMA sets out the criteria for when persons are adversely affected or not, or if notification of an application is required. In this case, the commissioner considered there were no grounds under the RMA to consider persons adversely affected or for notification. He received advice from three different expert traffic engineers and in the end considered the traffic aspects of the application would be acceptable.

- (e) *This is what they did to this entire community and the public that will use the non-complying roads that don't meet NZ Standards.*

7 Cont'd

While the road width of the spine road departs from the City Plan rule, two of the expert traffic engineers considered it to be an acceptable solution.

- (f) *The "approval" stated by Justin Prain was only granted due to a flawed process and resultant upon flawed, wrong and corrupt "evidence". Importantly, the applicant in this saga is NIL driven by Director Tom Kain, not Yaldhurst Village or Justin Prain.*

As staff understand this situation, Mr Stokes and a number of others are involved in the greater subdivision as land developers. Staff also understand there is a contract between NIL and them to provide certain works at particular timing. Staff understand there are parts of the contract under dispute.

- (g) *Council's John Gibson, who is pivotal in illegally allowing the construction of the non-complying works, personally engaged the "independent" traffic engineer and another "independent" former council colleague (at the council's expense) to write reports to support his own errors and the councils errors. The reports are not written from an "independent" perspective at all, nor from one of critique.*

Mr Gibson did not allow the unconsented works. While Mr Gibson was involved in engaging independent consultants for the processing of the variation, they were not engaged to support the Council. They were engaged because they were experienced professionals and independent. These consultants are not at a cost to the ratepayers as costs associated with the processing of a resource consent application are on charged to the applicant.

- (h) *Many breaches were not identified or assessed at all, including ones that put the safety of the public at risk. 300 percent increases in site density (85 metres squared sites in lieu of the City Plan minimum 250 metres squared) and two storey dwellings built right on road boundaries in lieu of City Plan required three metres landscaped setbacks were deemed by the "independent" planner to "generally comply" so as to justify what the council had illegally permitted to be built.*

Staff understand Mr Stokes raised these particular issues at the meeting in front of the commissioner. In the end, the commissioner was either of the view that they were not breaches or that the breaches were acceptable.

- (i) *The council was required under the Resource Management Act to notify affected parties. They had a time frame to do that but with bias refused to; they had already permitted the illegal construction of the grossly non-complying subdivision therefore had a vested interest in its approval. They effectively became co-applicants and used a corrupt scheme to get the puppet commissioner to further deny the entire affected community and the public their rights to oppose the major and "key element" departures from the City Plan.*

The commissioner's decision does not agree with Mr Stokes. The decision concludes after applying the statutory tests in the RMA that there were no affected parties. As previously discussed, the commissioner was independent. The fact that some unconsented works had occurred is not something that the commissioner can take into account when considering a resource consent application.

- (j) *For the sake of Christchurch's future I hope our Elected Council is strong enough to rise above the bullying and dictating tactics of senior players, management and staff and do the right thing by fixing this via the only means possible, a Judicial Review.*

As discussed above, it is accepted some unconsented works occurred in 2010 and early 2011 when they should not have. A process was subsequently put in place which ensured a fair and robust process for all parties involved. Legal advice to Council regarding a judicial review is on the Public Excluded section of this agenda.

STAFF RECOMMENDATION

That the Council receive this report for information.

**8. REPORT OF THE REGULATORY AND PLANNING COMMITTEE :
MEETING OF 29 FEBRUARY 2012**

Attached.

**9. REPORT OF THE REGULATORY AND PLANNING COMMITTEE :
MEETING OF 13 MARCH 2012**

Attached.

10. ARC INNOVATION LIMITED – DEED OF NOVATION

General Manager responsible:	General Manager City Environment
Officer responsible:	Asset and Network Planning Unit Manager
Author:	Tony Liu, Leasing Consultant

PURPOSE OF REPORT

1. To seek approval from the Council for a delegation to the Corporate Support Unit Manager to grant Lessor's Consent to Arc Innovations Limited (Arc Innovations) and Meridian Energy Limited (Meridian) to enter a Deed of Novation of Licence Sites for Telecommunication purposes.

EXECUTIVE SUMMARY

2. Arc Innovations Limited has approached the Council with a desire to enter a Deed of Novation between Meridian and Arc Innovations due to recent business restructuring.
3. Christchurch City Council entered a protocol agreement to Licence Sites for Telecommunications purposes with Arc Innovations in 2007. At the time of the agreement, Arc Innovations was trading as a standalone business entity. In 2009 Arc Innovations was amalgamated into, and became a business unit of, Meridian Energy Limited.
4. Meridian now intends to separate the business unit Arc Innovations back into a wholly owned subsidiary called Arc Innovations Limited. Hence, Meridian wishes to novate Arc Innovation's contractual relationships over to the new subsidiary.
5. The Protocol Agreement provides for a Deed of Assignment. However, an assignment does not relieve Meridian of their liabilities. In addition for business purposes it is important for Arc Innovations to be a standalone entity and in the same position as existed under the original protocol agreement. It has therefore been agreed that the arrangement is best recorded by way of a Deed of Novation.

FINANCIAL IMPLICATIONS

6. There is no financial implication for the Council with this transaction. Arc Innovations will cover any Council costs arising out of, or in relation to, the negotiation and completion of the Deed of Novation.

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

7. Not applicable.

LEGAL CONSIDERATIONS

8. Scott Holdaway from Buddle Findlay was engaged by the Council to provide legal advice on Arc Innovation's request and any benefits/implications between assignment and novation to the Council.
9. A novation would have the effect of relieving Meridian of liability under the protocol agreement and licences, which would be assumed by the lesser subsidiary (Arc Innovations). In contrast, an assignment would not usually relieve Meridian of their liabilities. While a novation may effectively be a return to the situation when the licences were entered into, it would still be appropriate to expect Arc Innovations to warrant that its financial position is no worse than prior to amalgamation.

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

10. Yes, as above.

10 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. Not applicable.

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

12. Not applicable.

ALIGNMENT WITH STRATEGIES

13. Not applicable.

Do the recommendations align with the Council's strategies?

14. Not applicable.

CONSULTATION FULFILMENT

15. Not applicable.

STAFF RECOMMENDATION

That the Corporate Support Unit Manager be delegated authority to enter into a Deed of Novation with Arc Innovations Limited and Meridian Energy Limited, subject to Arc Innovations warranting that its financial position is no worse than when it entered into the original Protocol Agreement with the Council in 2007 and that it covers the Council's cost associated with this.

**11. REPORT OF THE HAGLEY/FERRYMEAD COMMUNITY BOARD:
MEETING OF 14 DECEMBER 2011**

Attached.

**12. CHAIRPERSONS REPORT OF A MEETING OF THE HAGLEY/FERRYMEAD COMMUNITY BOARD:
MEETING OF 14 MARCH 2012**

Attached.

COUNCIL 22. 3. 2012

13. EVENTS VENUE HUB TO TEMPORARILY PROVIDE SPACE FOR EVENTS AND PERFORMING ARTS

General Manager responsible:	General Manager Public Affairs, DDI 9418982
Officer responsible:	Marketing Unit Manager
Author:	Richard Stokes

PURPOSE OF REPORT

1. The purpose of this report is to seek approval for the two Geo-Domes, that have been part of the Christchurch Events Village in Hagley Park, to remain in place and operational through to October 31, 2012.

EXECUTIVE SUMMARY

2. The location of temporary venues on Hagley Park for the Christchurch Events Village, through to 31 March 2012, was approved by the Council on 26 May 2011, culminating in a warrant being drafted and signed by the Chief Executive Officer under section 5(c) of the "Canterbury Earthquake (Reserves Legislation) Order 2011"
3. The Christchurch Events Village was then set up in June 2011 to provide events and performing arts venues at a time when there was a venue shortage and the events industry was in danger of losing capacity if we could not get our programme back up and running.
4. The Village has been well used with over 100 event days since June 2011. With major events such as the Rugby World Cup Fan Zone and World Buskers Festivals moving to Hagley Park to utilise the Christchurch Events Village infrastructure, an estimated 600,000 people have attended events in the site of the Christchurch Events Village over the last 9 months.
5. The continuation of a reduced-size Christchurch Events Village would provide a venue that is central, safe and accessible. With access to Cathedral Square, Victoria Square and other event spaces unlikely for some time, the Christchurch Events Village would continue to provide a base for important events such as KidsFest and New Zealand Ice Fest in 2012.
6. There is continuing demand for the venues in the Event Village, both from events and performances independent of the Council and from Council funded events.
7. Pacific Domes and Event Base, the suppliers of the Geo-Domes, have verbally confirmed their intention to gift the Geo-Domes to Christchurch. This significantly reduces operating costs and makes the continuation of the Events Village, on a reduced scale that includes the two Geo-Domes, a financially feasible option

FINANCIAL IMPLICATIONS

8. Currently the 2011/12 budgets for the Christchurch Events Village are not fully spent, the balance is available to cover operational costs for the Geo-Domes through to 30 June 2012. Budget of \$90,000 to cover operating costs from 1 July to 31 October will be put forward in the 2012/13 Annual Plan.

DO THE RECOMMENDATIONS OF THIS REPORT ALIGN WITH 2009-19 LTCCPP BUDGETS?

9. Yes.

LEGAL CONSIDERATIONS

10. The Council is able under section 5(c) of the Canterbury Earthquake (Reserves Legislation) Order No. 2 2011 :

Use a reserve or erect a structure on a reserve for any purpose not described in paragraphs (a) and (b), if the use or structure is necessary in the opinion of the council or the chief executive of the council to respond in a timely manner to any circumstances resulting from the Canterbury Earthquake.

COUNCIL 22. 3. 2012

13 Cont'd

11. The Council granted permission for the village through until 31 March 2012. The Council by resolution under the Order can extend this permission until the requested date 31 October 2012, if it considers this is necessary to continue to respond to circumstances resulting from the earthquake.
12. Under section 7 (3) of the Order, before the Council exercises it's powers under the Order it must make reasonable endeavours to give notice to a person or body whose rights and obligations in respect of the reserve will be affected or overridden by the council's exercise of it's powers under the order.

*Subsection (1) In this clause, **rights and obligations** (under the above clause), means rights and obligations under or in relation to an easement, a lease, a licence, a covenant, or other legal permission.*

13. There is no such person or body whose rights are going to be overridden by the granting this extension to the time that the reduced entertainment village can remain on North Hagley Park
14. The Council by virtue of sections 6 (1)(a) and (b) of the Order is not required to undertake any public consultation about it's intention to extend the occupation under the order, although this occupation is in alignment with the purpose for which this area of North Hagley Park is set aside for under the Hagley Park Management Plan 2008, that being an entertainment zone.
15. The Council must however take all reasonable steps to protect the integrity of the park, (section 6(2)(a) of the Order), and reinstate the reserve as closely as possible to its prior condition after the occupation under the Order has finished. This is a requirement that is set out in the warrant of occupation.
16. Under the Order in Council (OiC) (Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011, there is a new streamlined process for temporary "accommodation" as a result of earthquake displacement. The events hub is to provide space for event activity that would have used central city locations if they were available.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

17. Aligns with page 52, 53 of the LTCCP, Events and Festivals levels of service to provide a year round programme of events and to support festivals run by other organisations.

Alignment with Strategies

18. Events Strategy 2007-17

Goal 1 – A vibrant calendar of events that enhance Christchurch as a place to live and visit.

Goal 5 – Strong partnerships drive increasing investment in Christchurch events. Within Christchurch there is opportunity for a more coordinated events response to event opportunities. Council is in a position to provide leadership across venues, support services, marketing and funding agencies so that we have a collective city response to event opportunities.

CONSULTATION FULFILMENT

19. Key stakeholders within the events and performing arts industries were consulted in the original proposal for the Christchurch Events Village. There has been continuing demand for the use of the venues. The period from 1 July to 31 October is contingent on funding being obtained to cover operating costs.

COUNCIL 22. 3. 2012

13 Cont'd

BACKGROUND (THE ISSUES)

20. A temporary events and performing arts space with marquee structures has been operational in the events space of Hagley Park since May 2011. Promoted as the Christchurch Events Village, it has been a venue for event activity, including Canterbury Celebration Theatre, Rugby World Cup 2011 Fan Zone, World Buskers Festival, Fly My Pretties, Comedy Convoy, Christchurch Arts Festival, Coast to Coast registration, KidsFest, corporate and community groups and displays.
21. The Christchurch Events Village has provided a central, safe and accessible location for the people of Christchurch to engage in event activity Events staged in this area of Hagley Park since May have attracted over 600,000 attendees.
22. The Council's inflatable Dome, which was placed on the northern side of the main cycle path that runs from the Armagh St Bridge through Hagley Park, was removed prior to ASB Classical Sparks on 5 February.
23. The two Geo-Domes which are located on the southern side of the cycle path remain in place and continue to provide a venue for events and performing arts. There is demand for these venues and the Hagley Park events area to continue as an Events Village, given that central city performance and events venues are still out of action.
24. For the operation of the Events Village from May 2011-March 2012, we hired the Geo-Domes from Event Base, the New Zealand based partner for Pacific Domes, Oregon, USA. Event Base has advised that at the completion of the current hire period for the Event Village, Pacific Domes will gift the two Geo-Domes to Christchurch so they can remain in the city and be used through the transitional phase of the Central City rebuild.
25. The gifting of the Geo-Domes means a substantial reduction in operating costs. Security and electrical costs are the remaining major costs in keeping the venues operational. Operational costs for the two Geo-Domes are estimated at \$22,000 per month.
26. The current operational budget for the Christchurch Events Village can cover operational costs through to 30 June.
27. Under this proposal the site of the Christchurch Events Village will be of a reduced size, on the south of the cycle path. (See attachment.) This area is in good condition and can continue to cope with event activity through this period.
28. The events area of the park, north of the cycle path, where the Rugby World Cup Fan Zone, Coca Cola Christmas in the park and ASB Classical Sparks have been held, is very worn and in need of recovery. It is planned to leave this area free of event activity upon completion of the Ellerslie International Flower Show (mid-march) through to Coca Cola Christmas in the Park (late November) to allow remedial work to take undertaken.

STAFF RECOMMENDATION

It is recommended that:

- (a) The Council approve pursuant to section 5(c) of the Canterbury Earthquake (Reserves Legislation) Order No. 2 2012 that a 'reduced-size' Christchurch Events Village with two Geo-Domes, be sited in the Events Triangle area of North Hagley Park, through to 31 October 2012.
- (b) That the appropriate sections of the warrant of occupation be altered accordingly.
- (c) That appropriate recognition be extended to Event Base and Pacific Domes to thank them for gifting the two Geo-Domes to Christchurch City to be used through the transitional phase for events and performances, while the central city reopens.

COUNCIL 22. 3. 2012

14. PROPOSED AMENDMENTS TO URBAN DEVELOPMENT STRATEGY IMPLEMENTATION COMMITTEE REPRESENTATION

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Programme Manager District Planning, Strategy and Planning
Author:	Keith Tallentire, UDS Implementation Manager

PURPOSE OF REPORT

1. The purpose of this report is to ratify changes to the Greater Christchurch Urban Development Strategy Implementation Committee to enable greater engagement with Canterbury Earthquake Recovery Authority (CERA) and Ngai Tahu on Urban Development Strategy (UDS) Implementation matters.

EXECUTIVE SUMMARY

2. At the 19 December 2011 meeting of the Greater Christchurch Urban Development Strategy Implementation Committee (UDSIC) it was recommended that UDS Partner Councils report to their respective Council meetings seeking ratification of changes to UDSIC representation. These changes would enable greater engagement with CERA and Ngai Tahu on UDS implementation matters.
3. The changes proposed are the addition of the Chief Executive of CERA in an observer status, the addition of a further representative from Te Rūnanga o Ngāi Tahu (TRONT), and a change to the named TRONT representatives.
4. TRONT are currently represented at UDSIC by their Chief Executive, Mike Sang. TRONT have recently reviewed their UDSIC representation and to align more closely with the elected member and commissioner representation of UDS partner Councils it has named Mark Solomon and Wally Stone as its preferred nominees. Mike Sang would continue to be represented at the Chief Executives' Advisory Group.
5. Wally Stone is the Te Rūnanga representative for Rāpaki and is the chair of Te Aweawe Ru Whenua (TARW). TARW is a Ngāi Tahu committee comprising both Canterbury Te Rūnanga representatives and also Canterbury Rūnanga Chairs that is focused on earthquake specific recovery matters. Mark Solomon is the Kaiwhakahaere of Ngāi Tahu and the elected representative on Te Rūnanga for Kaikōura.
6. The existing and proposed new UDSIC representation is shown diagrammatically in **Attachment A** and **Attachment B** respectively. The staff recommendation is that the above amendments to UDSIC representation are made.
7. For reference, the December UDSIC meeting also received a report detailing a CERA-proposed governance and management framework for the consideration of earthquake recovery planning matters. This matter has already been considered by the Council in February.

FINANCIAL IMPLICATIONS

8. The proposed changes to UDSIC do not confer any further financial implications to the Council.

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

9. Council apportioned costs for UDS matters are already included in existing budgets.

LEGAL CONSIDERATIONS

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

10. The UDSIC is already constituted as a joint committee of the UDS Partner Councils. Changes in representation must be made by the UDS partner Councils in accordance with Schedule 7 of the Local Government Act 2002.

14 Cont'd

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. The UDS supports a wide range of community outcomes identified in the LTCCP.

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

12. Yes. The work of the UDSIC particularly support the 'City and community long-term policy and planning' objectives of the LTCCP (p186-199).

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

13. Yes. The recommendations assist in ensuring alignment and integration with numerous other Council strategies.

CONSULTATION FULFILMENT

14. No community consultation is required.

STAFF RECOMMENDATION

It is recommended that the Council ratifies changes to the Greater Christchurch Urban Development Strategy Implementation Committee, in particular:

- (i) The addition of the Chief Executive of Christchurch Earthquake Recovery Authority in an observer status, and
- (ii) The addition of a further representative from Te Rūnunga o Ngāi Tahu.
- (iii) Changes to Te Rūnunga o Ngāi Tahu representatives, replacing Mike Sang with Mark Solomon and Wally Stone.

COUNCIL 22. 3. 2012

15. PLAN CHANGE 59 ST MARTINS NEW WORLD – FINAL APPROVAL

General Manager responsible:	General Manager Strategy and Planning
Officer responsible:	Programme Manager, District Planning
Author:	David Punselie Assistant Planner

PURPOSE OF REPORT

1. This report seeks the Council's approval to make operative the changes to the City Plan introduced by its decision on Plan Change 59.

EXECUTIVE SUMMARY

2. Private Plan Change 59 (PC 59) was requested by Foodstuffs (South Island) Properties Limited. It seeks to rezone three residential properties adjacent to the St Martins shopping centre from Living 1 to Business 2P (District Centre – Parking). The change would allow Foodstuffs to provide an additional 82 car parking spaces which would meet the City Plan's requirements for car parking associated with the proposed future expansion of the New World supermarket.
3. Public notification of the plan change request on 7 May 2011 attracted 11 submissions. Commissioner Max Barber conducted a hearing in October 2011. His recommendation that the plan change request be approved with modification was adopted by the Council at its meeting on 8 December 2011.
4. No appeals against the decision have been received. As the matter is now beyond challenge the Council can take the necessary steps to make operative the changes introduced by Plan Change 59. The Plan Change as amended by the Council at its meeting on 8 December 2011 is attached as **Attachment 1**.

FINANCIAL IMPLICATIONS

5. There are no direct financial implications.

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

6. The recommendation will not impose on the LTCCP budgets.

LEGAL CONSIDERATIONS

7. The recommendation in this report is for the Council to take the procedural step to make operative the changes introduced by the Council's decision on Plan Change 59. The Resource Management Act 1991 requires that, following the closing of the appeal period and the resolution of any appeals, the Council must formally approve the changes to the plan under clause 17 of Schedule 1 before the plan change becomes operative on a date that is nominated in a public notice of the Council's approval. This plan change has reached the stage where it can be made operative.

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

8. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

9. Aligns with District Plan Activity Management Plan.

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

10. Yes. Supports the project of processing plan changes in compliance with statutory processes and time frames.

15 Cont'd

ALIGNMENT WITH STRATEGIES

11. Not applicable.

Do the recommendations align with the Council's strategies?

12. Not applicable.

CONSULTATION FULFILMENT

13. Approval of changes to the District Plan under clause 17 of Schedule 1 to the Resource Management Act 1991 is a procedural step that does not require consultation.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Approve, pursuant to clause 17(2) of the Resource Management Act 1991, the changes to the District Plan introduced by the decision of the Council on Plan Change 59 St Martins New World.
- (b) Authorise the General Manager, Strategy and Planning to determine the date on which the changes introduced by Plan Change 59 become operative.

**16. REPORT OF THE HERITAGE AND ARTS COMMITTEE:
MEETING OF 7 MARCH 2012**

Attached.

COUNCIL 22. 3. 2012

17. BROTHELS LOCATION AND SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES BYLAW

General Manager responsible:	General Manager Strategy and Planning, DDI 941- 8281
Officer responsible:	Programme Manager Strong Communities
Author:	Mel Renganathan

PURPOSE OF REPORT

1. This paper presents a proposed option for the development of a bylaw under the Prostitution Reform Act 2003 (PRA) to regulate the location of brothels and control signage advertising commercial sexual services that is in, or is visible from, a public place. Council direction is sought through this report before a proposed bylaw, a statement of proposal, and a summary of information are drafted.

EXECUTIVE SUMMARY

2. The Christchurch City Brothels (Location and Signage) Bylaw 2004 (the 2004 Bylaw) expired on 6 July 2011. Since that time signage advertising commercial sexual services has only been subject to the same rules for signage as other activities regulated by the City Plan and Proposed Banks Peninsula District Plan (the District Plan) in the same way as other businesses, as have the location of brothels since July 2005.
3. The Council determined at its 22 September 2011 meeting that there was sufficient evidence of a perceived problem relating to the location of brothels and to signage advertising commercial sexual services to warrant the development of a bylaw and requested that staff develop options for a bylaw to address these issues. This report reflects the position adopted by Council in September 2011 on the need to regulate the location of brothels and signage advertising sexual services in the city.
4. As part of the bylaw development process the Council has previously considered whether there were other options to address these problems¹ including the use of enforcement powers in the Resource Management Act 1991 and the Advertising Standards Authority. More recently staff have looked at whether specific provisions could be included in the District Plan (Christchurch City and Banks Peninsula sections).
5. Staff have received advice from Simpson Grierson, a summary of which is attached as **Attachment 1**, on the Council's ability to include specific provisions in its district plan on the location of brothels and to control signage advertising commercial sexual services. Simpson Grierson concluded that evidence of actual or potential (rather than perceived) adverse effects on the environment or risk to the environment is necessary for the Council to consider changes to the district plan. The extent to which the actual or potential effects on people and communities including social conditions, can be considered is also limited and would need to be more than offensiveness caused due to people's attitudes.
6. Staff consider that a bylaw is the preferred means of regulating the location of brothels and signage advertising commercial sexual services on the basis that the issues that can be considered are broader than those effects that can be addressed in a district plan and the PRA provides the Council with specific powers to regulate these activities through a bylaw. In addition the process of preparing a bylaw is comparatively shorter, at less cost than a plan change, and could provide greater certainty for businesses and the community on the appropriate locations for brothels.

¹ Under section 155 of the LGA, the Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem.

COUNCIL 22. 3. 2012

17 Cont'd

7. The proposed bylaw would regulate the location of brothels by requiring that all brothels, other than small owner-operated brothels (SOOBs), be located in areas contained within specific business zones identified in the District Plan and the Draft Central City Plan, and be prohibited from all remaining zones. It would allow brothels in the proposed Central City Core, Central City Fringe and some of the Mixed Use Zones in the Draft Central City Plan (see **Attachment 3**), certain areas in the Commercial Business Zone in the City Plan (see **Attachment 4**), and the Lyttelton Town Centre Zone of the Proposed Banks Peninsula District Plan (see **Attachment 5**). No regulation is proposed for the location of SOOBs. Staff also recommend that known existing brothels should be exempt from the bylaw location requirements.
8. The proposed bylaw would regulate signs advertising commercial sexual services in the zones where operator-run brothels are permitted to locate through controls on the number, placement and content of signs. Signage advertising commercial sexual services would be prohibited in the rest of the city.
9. If Council agrees with these proposals, staff will prepare the recommended bylaw for adoption for public consultation at the Council meeting in May 2012. The Special Consultative Procedure is then expected to run from mid June to mid July with hearings anticipated in mid to late July. Staff expect to take the bylaw for adoption at the Council meeting in August, and for the proposed bylaw to be implemented by September of this year.

FINANCIAL IMPLICATIONS

10. Consultation on any new bylaw must be undertaken by way of the Special Consultative Procedure. The associated costs include printing and distribution of the Statement of Proposal and Summary of Information, the placement of public notices, and staff costs in supporting a hearings panel. These costs are budgeted for in the City and Community Long-term Planning Activity in the LTCCP.
11. The costs of enforcing the bylaw are difficult to determine. Legal advice obtained during the review of the 2004 Bylaw indicated possible difficulties in obtaining evidence for offences, as it would be necessary to prove that commercial sexual services are being provided from the premises in question. This could add to the cost of enforcement. However, as there were no signage-related offences under the 2004 Bylaw in the seven years of its operation, it is unlikely that the need to enforce controls on signage will be common. Moreover, enforcement officers already respond to complaints about the location and operation of brothels as part of their role in enforcing the requirements of the District Plan. These costs are budgeted for in the Enforcement and Inspections Activity of the LTCCP. However, investigations of complaints may require the use of resources outside of Council's core business hours - by virtue of the nature of brothel operations. The need for such resources will be monitored and any increase in costs will be brought to the attention of the Council.

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

12. As noted above, the costs of consultation are provided for within the Community and City Long-Term Planning Activity and the costs of enforcement will be met from the Enforcement and Inspections Activity.

LEGAL CONSIDERATIONS

Resource Management Act 1991 (RMA)

13. The Council has previously considered, as part of the review of the 2004 Bylaw, its powers under the Resource Management Act 1991 in relation to signage advertising commercial sexual services. The RMA provides the Council with the ability to apply for an enforcement order or serve an abatement notice to require a person to cease or prohibit them from commencing, or require the person to do something, that, in the opinion of the Environment Court or an enforcement officer, is or is likely to be offensive or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.

17 Cont'd

14. More recently the Council has considered using district plan provisions under the RMA. This is discussed further in paragraphs 56 to 58. Provisions can be included in the District Plan for regulating the location of brothels and signage advertising commercial sexual services, only if there are actual or potential effects on the environment such as visual aspects, traffic, parking and noise. While the environment includes people and communities including their social conditions, adverse social effects as a result of people's attitudes can not be considered as an environmental effect. Furthermore, there would need to be evidence of adverse effects or a risk to the environment to consider changes to district plan.
15. If there were effects arising, there would need to be evidence to distinguish such effects from other commercial activities in order to have specific rules controlling the location of brothels. In the absence of demonstrable effects from brothels, creating specific rules to control them in the district plan cannot be considered as a valid means under the RMA to control the location of brothels.

The Prostitution Reform Act 2003 (PRA) and the Local Government Act 2002 (LGA)

16. The PRA provides for territorial authorities to make bylaws relating to the location of brothels and signage that advertises commercial sexual services. The provisions of the LGA must be applied when making such a bylaw. For the purposes of this report, "brothel" refers to SOOBs² and operator-run brothels³.

*Location of brothels*⁴

17. Section 14 of the PRA states that without limiting section 145 of the LGA a territorial authority can make a bylaw for the purpose of regulating the location of brothels under section 146 of the LGA. No further guidance on this bylaw-making power is provided in the Act but section 15 of the PRA is also relevant. Section 15 requires that:

"(1) when considering an application for a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, a territorial authority must have regard to whether the business of prostitution—

- (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or*
- (b) is incompatible with the existing character or use of the area ..."*

18. In making a bylaw, the Council needs to be satisfied that the matters in section 155 of the LGA have been complied with. Under section 155 of the LGA, the Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. If so, then it must determine whether the proposed bylaw is in the most appropriate form and whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA). Section 155(3) states that no bylaw can be made that is inconsistent with the NZBORA.

*Signage advertising commercial sexual services*⁵

² Section 4(1) of the Prostitution Reform Act 2003 defines a small owner operated brothel as "a brothel—

(a) at which not more than 4 sex workers work; and

(b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel."

³ Where the operator holds an operator certificate (under section 34 (1) of the PRA) issued by the Registrar of the District Court in Auckland

⁴ Section 4(1) of the Prostitution Reform Act 2003 defines a brothel as "any premises kept or habitually used for the purposes of prostitution." Prostitution is defined as "the provision of commercial sexual services; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere."

⁵ Section 4(1) of the Prostitution Reform Act 2003 defines commercial sexual services as;

"... means sexual services that—

(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and

(b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)"

17 Cont'd

19. Section 12 of the PRA states that a territorial authority can make bylaws that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services. The prohibition or regulation of such signs can be in any terms, and the terms can include the imposition of restrictions on the content, form or amount of signage on display. However, a bylaw can only be made:
- “...
(2) *if the territorial authority is satisfied that **the bylaw is necessary to prevent the public display of signage that:***
- (a) ***Is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or***
- (b) ***Is incompatible with the existing character or use of that area....”***
20. In making this bylaw, the Council therefore needs to be satisfied the bylaw is necessary for at least one of these reasons, in addition to being satisfied that the matters in section 155 of the LGA have been compiled with. As with a bylaw relating to the location of brothels, Council must determine whether a bylaw is the most appropriate way of addressing the perceived problem, whether the proposed bylaw is in the most appropriate form and whether it gives rise to any implications under the NZBORA. However, section 13(2) of the PRA provides that a bylaw relating to commercial sexual services signage may be made even if it is inconsistent with the NZBORA.

The Council's determinations under the PRA and LGA

Location of brothels

21. In 2009 during earlier stages of reviewing the 2004 Bylaw, the Council did not consider that there was a problem that needed to be addressed with respect to the location of brothels. However, the effects of the February 2011 earthquake including closure of the central city has caused concerns regarding the potential relocation of brothels to other areas that would not be subject to any regulation. Most operator-run brothels were located in the central city and are now badly damaged and/or inaccessible. These businesses may wish to relocate to other parts of the city and they may not need a resource consent, subject to compliance with standards including noise, hours of operation and parking.
22. The Council may only make a bylaw *to regulate* the location of brothels. It may require that brothels be confined to certain areas of the district, where there is good reason for this, but it does not have the power to prohibit the establishment of brothels in every area of the district. Previous consultation has indicated strong community opposition to brothels being located in residential areas. The areas in which brothels would be permitted under the recommended option for a proposed bylaw does not include residential areas. However, an exception should be made for SOOBS, which already operate across the city without any obvious problems and minimal complaints, and for existing brothel premises outside the proposed permitted zones. Options are further discussed in paragraphs 59-94.
23. The recommendation's proposed areas in which brothels will be allowed to locate are; within a selected area of the Commercial Business Zone in the City Plan, the Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan, and the proposed Central City Core, Central City Fringe and two areas in the Mixed Use Zones of the Draft Central City Plan. It is considered that, with these exceptions for SOOBS and existing brothels these controls are reasonable and that a proposed bylaw of this nature would be the most appropriate form.
24. The location provisions of the proposed bylaw are consistent with the NZBORA.

Signage advertising commercial sexual services

25. The Council has previously determined that a bylaw is the most appropriate way to address the perceived problem of signage advertising commercial sexual services, and that such a bylaw is necessary in terms of section 12(2) of the PRA. These determinations were made during the 2004 Bylaw review and following the Council's consultation process in 2009 on the revocation of the 2004 Bylaw. These matters were re-considered by the Council in September 2011 and the Council again determined that a bylaw is the most appropriate way to address the problem.

COUNCIL 22. 3. 2012

17 Cont'd

26. The Council can only regulate signs that advertise commercial sexual services and that cause nuisance or serious offence, or are incompatible with the existing character or use of an area. If a particular sign does not meet either of these requirements then it is beyond the Council's powers to regulate that sign under the PRA. It would also be beyond the Council's powers to prohibit every sign that advertises commercial sexual services, as not every sign will be one that causes nuisance or serious offence or is incompatible with the use of an area. Parliament could have used the word "district" in section 12 if it intended to allow Councils to prohibit signs across the whole of their districts.
27. The form of the proposed bylaw would not prohibit all signs in the district. This is discussed in greater detail in paragraphs 95 to 99. It has a similar scope to the 2004 Bylaw in that it prohibits signs in most of the district but allows signs, with restrictions on content and form, in the zones where operator-run brothels are allowed. This is on the basis that signage in these areas, with appropriate controls placed on it, as to size, nature, number and image is not incompatible with the use of these areas. Signage advertising commercial sexual services would not be allowed in all other areas in the district.
28. The Council must also determine that the proposed bylaw is in the most appropriate form. It should still make a determination about whether the bylaw gives rise to any NZBORA implications but it can propose to make the bylaw even if it is considered to be inconsistent with that Act.
29. The proposed bylaw and the manner in which it prohibits signage completely in most of the district may give rise to implications under the NZBORA. It has implications for the right to freedom of expression in section 14 of the NZBORA ("everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form"). Even if there was considered to be an inconsistency with section 14, as noted above, any inconsistency with the NZBORA does not prevent the bylaw from being made. Note that a prohibition on signs does not prevent a business advertising commercial sexual services because section 11(1)(b) of the PRA allows for classified advertisements in newspapers.

Scope of proposed bylaw

30. It is clear that a bylaw made under section 14 of the PRA/section 146 of the LGA can reasonably state that brothels (including SOOBs) may not be located in some parts of the district. If the Council makes such a bylaw then any existing brothels operating outside the defined area where brothels are allowed would become unlawful if they were still operating on the day the bylaw comes into force. There is no provision for "existing use rights" in relation to a bylaw, in the same way as there is in the Resource Management Act 1991. This is further discussed in paragraphs 93 to 94.
31. However, the Council should consider making an exception for SOOBs as these currently operate across the city generally without any problems. Making SOOBs subject to the same requirements as other brothels could drive them underground, be contrary to the intention of the PRA, and open up the Council to further judicial review proceedings. Moreover, determining the location of such premises would be almost impossible as they do not require operating licences, nor can entry be obtained without Court warrant on very restricted grounds by the Police.
32. The Council may also wish to make an exception for existing brothels, that do not comply with any new bylaw controls on location, as there may also be a risk of judicial review proceedings from those businesses, unless the Council can provide clear reasons for not providing an exception. In making the 2004 Bylaw, the Council was advised that although it would not have to pay compensation to any business, the Council should nonetheless have good reasons for justifying its proposed boundaries and not extending them or making an exception for any brothels outside the area, given the relatively severe impact on any business concerned. However, consideration should be given to whether the Council should provide a limited period of time for these existing brothels to relocate, after which the bylaw would apply and they would need to cease to operate.

17 Cont'd

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

33. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

34. The proposed bylaw is broadly aligned to the City and Community Long-term Planning Activity through the provision of advice on key issues that affect the social, cultural, environmental and economic wellbeing of the city. It is also consistent with the Enforcement and Inspections Activity, which aims to protect people from hazards and nuisances and ensure compliance with the City Plan and other regulations.

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

35. As above.

ALIGNMENT WITH STRATEGIES

36. There are no strategies that relate specifically to this issue.

Do the recommendations align with the Council's strategies?

37. See above.

CONSULTATION FULFILMENT

38. The proposed bylaw is subject to formal consultation with the community by way of the Special Consultative Procedure (as required by section 83 of the LGA). Staff have drawn on previous consultation and advice from key stakeholders, and engagement comments on the Draft Central City Plan, in preparing the recommended option for the proposed bylaw and this report.

39. Public consultation was undertaken on the proposed revocation of the 2004 Bylaw in late 2009. The Council received 345 submissions, the majority of which considered there should be a bylaw prohibiting or regulating signage advertising commercial sexual services. It was also suggested that the lack of any problem with signs could be attributed to the existence of the 2004 Bylaw. While not the subject of the consultation, many submitters also commented that the location of brothels should be regulated.

40. The New Zealand Police advised that they are unaware of any problems associated with the location of brothels, or indeed any nuisances from such sources. Community and Public Health representatives, who operate as Brothel Inspectors under the PRA, advised that they do not consider there are issues with either the location of brothels or signage.

41. Some brothel operators advised they are unlikely to install further signage as they wish to keep signage discrete. They are also able to advertise in the classified advertisement sections of newspapers. The local branch of the Prostitutes Collective advised that they were not aware of any problems with signage, but considered there may be a need to provide controls over offensive signage. These controls could be through a bylaw or other means, such as the Resource Management Act 1991 for example. The local branch of the Prostitutes Collective has also advised that, following the February 22 earthquake, many sex workers are now working in SOOBs and that, in their view, many sex workers are unlikely to return to working in operator-run brothels. The Prostitutes Collective is unaware of any operator-run brothels seeking to relocate out of the central city. One brothel owner who is still operating has advised staff that most businesses would prefer to reopen in the central city when it is open.

42. Formal comment received from the public on the Draft Central City Plan undertaken in August-September 2011 elicited a number of comments about the location of brothels. While not specifically asked to comment on this issue, many people took the opportunity to express their concern about brothels lowering the tone of the central city – some expressed a preference for no brothels; others suggested they be concentrated in a small area.

17 Cont'd

STAFF RECOMMENDATION

Staff recommend that the Council resolve that:

1. Staff develop a proposed Bylaw, Statement of Proposal and Summary of Information, that:
 - (a) Requires all brothels, other than small owner-operated brothels, to be located within specific areas based on particular zones identified in the City Plan and Proposed Banks Peninsula District Plan and Draft Central City Plan, namely the;
 - (i) Specific areas within the Commercial Business Zones of the City Plan (attachment 4);
 - (ii) The Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan (attachment 5);
 - (iii) Central City Core, Central City Fringe and two areas within the Mixed Use Zones to the south west and south east of the central city area in the Draft Central City Plan (attachment 3);
 - (b) Prohibits signage advertising commercial sexual services in all zones except those listed in (a) above;
 - (c) Regulates signage advertising commercial sexual services within the zones listed in (a) above by requiring that only one sign be displayed and that signs:
 - be attached to the premises at which the commercial sexual services are provided;
 - clearly display the number of the premises to which the sign relates;
 - not be offensive;
 - not display any pictorial image;
 - not exceed 0.3 square metres in surface area; and
 - not be illuminated by any flashing light.
 - (d) Provides an exemption from the location provision for known existing brothels, that are not small owner-operated brothels, by listing them in a schedule.
2. It notes that the proposed signage provisions may give rise to implications under section 14 of the New Zealand Bill of Rights Act 1990, but that the Bylaw can still be made, pursuant to section 13 of the Prostitution Reform Act 2003;

BACKGROUND (THE ISSUES)

43. The Christchurch City Brothels (Location and Signage) Bylaw 2004 (the 2004 Bylaw) was adopted by the Council on 7 July 2004. The Bylaw originally restricted the location of brothels, and signage advertising commercial sexual services, to specified areas within the central city, and placed controls on signage. However, the location provisions were quashed by the High Court in 2005 because they failed to make provision for SOOBs which, by their nature, operate across the city. Only the signage provisions remained. The Bylaw expired on 6 July 2012.

Review of the 2004 Bylaw

44. The LGA requires that the 2004 Bylaw be reviewed five years after it came into force. A review was commenced in 2008 and has been the subject of several reports to the Council. The Bylaw was considered most recently at the 22 September 2011 Council meeting. The Council agreed that there was sufficient evidence of a perceived problem relating to the location of brothels and signage advertising commercial sexual services to warrant the development of a bylaw and requested staff develop options for a bylaw to address these issues. In December 2011, staff presented options for a bylaw at a Council workshop, where creating specific provisions within the City and District Plan was identified as an option to be investigated.

17 Cont'd

Problem definition

Location of brothels

45. Since 2005, when the location provisions of the 2004 Bylaw were quashed, the Council has controlled the location of brothels within Christchurch City via the City Plan. The City Plan treats brothels like any other commercial service. The following rules generally apply:
- In living zones there is limited scope for a brothel to be established as a permitted activity (that is, without resource consent) unless it is a small-scale home-based business with limited hours of operation.⁶
 - In business zones the rules are more permissive, but the brothel would need to meet standard requirements relating to bulk and location, car parking and traffic generation.
46. Brothels have never been subject to bylaw regulation in Banks Peninsula. Under the Proposed Banks Peninsula District Plan, brothels are treated as a permitted activity within the Town Centre Zones and are a discretionary activity in the Industrial Zones, subject to standard conditions relating to building size, height, parking and access provisions.
47. When considering a resource consent application for a business of prostitution, the Council is required, under section 15 of the PRA, to consider whether the business is likely to cause a nuisance or serious offence to ordinary members of the public using the area, or is incompatible with the existing character or use of the area.
48. A small number of complaints are received by the Council each year and generally relate to SOOBs. For example, there were ten complaints in 2009/10 and eleven complaints in 2010/11. So far there have been four complaints in 2011/2012. Complaints tend to arise when a neighbour notices comings and goings from an address and expresses concern about the existence of a brothel. Complaints are investigated and are resolved either by confirming that the requirements of the District Plan are being met or by writing to the operator pointing out how the requirements of the District Plan are being breached. In the latter situation, operators will generally comply or move on. Continued non-compliance has meant the issue of infringement and abatement notices in the past. Sometimes the property owner becomes aware of the activity and the operator is moved on, regardless of whether or not the business complies with the District Plan.
49. A brothel operating on Papanui Road was brought to the attention of staff late last year. Staff have met with the brothel operator and confirmed that it is an operator-run brothel, not a SOOB (as it is not owner-operated) and that the brothel complies with the City Plan rules for a home business with regards to the floor area used for the business, number of people working at the business who reside off-site, parking requirements and traffic generation. Under City Plan rules, the business is considered to have the same environmental effects (or less) as a residential activity and is therefore a permitted activity.

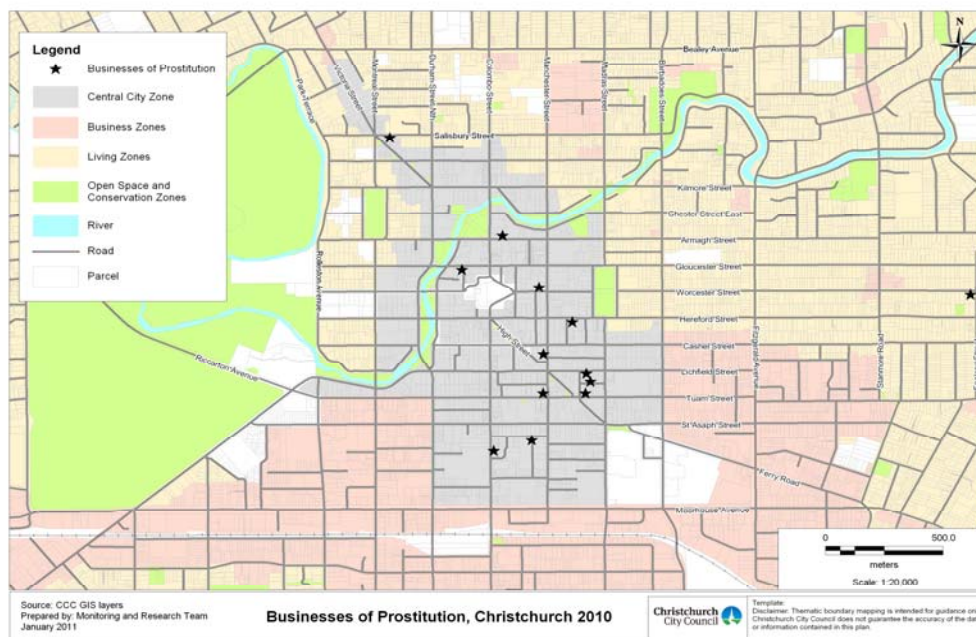
The effect of the earthquakes on the location of brothels

50. The location of brothels may become more of an issue, however, in the aftermath of the February 2011 earthquake. As shown in the following map, most known brothels were located within the central city in 2010. Many were badly damaged in the February earthquake, and only one of these brothels, and two new brothels (other than SOOBs), are known to be operating.⁷ It is possible that some of the affected businesses will wish to temporarily or permanently relocate out of the central city. The Council has received one application for a brothel previously located on Lichfield Street to relocate under provisions of the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011. The location of SOOBs is unknown and it is likely that most continue to operate across the city.

⁶ At least one worker must live on-site, only one person may be employed who lives elsewhere, the floor area is restricted to 40m² and the business must be closed by 11pm. There are also limits on visitor numbers and at least four parking spaces must be provided on-site.

⁷ This includes an existing business at 464 Worcester Street, and new businesses at 484 Tuam Street and 134 Papanui Street.

Figure One: Map of known Brothels 2010



Signage advertising commercial sexual services

51. The 2004 Bylaw, now expired, restricted signage advertising commercial sexual services to the specified areas within the central city and included the following controls:
 - Only one sign was allowed (or two if the business had multiple street frontages).
 - The sign had to be attached to the premises.
 - Only the name of the business, the name of the person conducting the business and the street number could be included on the sign.
 - No pictorial images or flashing lights were allowed.
 - The sign could be no greater than 0.3m² in surface area.

52. There is limited evidence of problems with signage advertising commercial sexual services since the 2004 Bylaw came into effect. The Inspections and Enforcement Unit have dealt with only one complaint about offensive signage since 2004, which was promptly addressed. Discussions with the local branch of the Prostitutes Collective and some brothel owners indicated a preference among this business community for keeping signage discreet. However, it is possible that the current lack of any significant problems with signs advertising commercial sexual services is also due to the existence, until recently, of bylaw controls.

53. When the Council consulted on the revocation of the 2004 Bylaw, the Council received many submissions expressing concern that a lack of bylaw controls on signage advertising commercial sexual services would result in signage that is offensive to ordinary members of the public. Many submitters were concerned about children and young people being exposed to such signage and did not consider that other tools (such as the Resource Management Act or the Advertising Standards Authority) would be effective in addressing these concerns. This indicates that while there have been few problems with signage to date, there may nonetheless be a *perceived* problem to be addressed. That was the view of the Council when it considered the hearing panel report in December 2009.

54. Many of the known operator-run brothels were located within the central city and most were badly damaged during the earthquake of 22 February 2011. It is possible that some of these businesses may wish to relocate, with signage, to other areas of the city. At the time of this report, there has only been one application to relocate under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011. There have also been two new businesses that have opened.

COUNCIL 22. 3. 2012

17 Cont'd

THE OBJECTIVE

55. The desired objective is to ensure that both the location of brothels and signage advertising commercial sexual services:
- (a) are compatible with the character and use of areas within the district; and
 - (b) do not cause a nuisance or serious offence to ordinary members of the public.

THE OPTIONS

Location of brothels and signage advertising commercial sexual services

Non-bylaw options

56. Under section 155 of the LGA, the Council is required to identify non-bylaw options to address the issue. The Council previously considered and dismissed other options such as continuing to rely on the District Plan to regulate the location of brothels in the same way as other businesses. Since then, further consideration has been given to creating specific district plan provisions to control the location of brothels and signage advertising commercial sexual services.
57. Simpson Grierson has advised that the Council can legally include provisions in the District Plan for regulating the location of brothels and signage advertising commercial sexual services, **but** only if there are actual or potential effects on the environment such as visual aspects, traffic, parking and noise. While the environment includes people and communities including their social conditions, adverse social effects as a result of people's attitudes could not be considered. Furthermore, there would need to be evidence of adverse effects or a risk to the environment to consider changes to district plan. A summary of Simpson Grierson's advice is included in **Attachment 1**.
58. While Council staff are aware of concerns raised by the community, there has not been evidence to demonstrate that there are actual or potential adverse effects on the environment that can be regulated through the district plan. If there were effects arising, there would need to be evidence to distinguish such effects from other commercial activities in order to have specific rules controlling the location of brothels. In the absence of demonstrable effects from brothels, creating specific rules in the district plan cannot be considered as a valid means to control the location of brothels.

Bylaw options for the location of brothels

59. Developing a bylaw (as provided for under section 14 of the PRA) to regulate the location of brothels would provide more specific controls on where brothels may and may not be established, bearing in mind the character and use of areas and the likelihood of causing a nuisance or serious offence. The Council had not seen the need for such a bylaw in earlier stages of the review. However, the significant damage of existing businesses from the central city, and the likelihood that at least some of these businesses will seek to relocate, suggests that there may now be value in directing these establishments (other than SOOBs) to certain areas of the city rather than allowing them to disperse.
60. Three broad high level options were considered to regulate the location of brothels. These are described and discussed in the paragraphs below.

17 Cont'd

1. Restricting brothels to certain parts of the city

61. This option would mean that brothels would be restricted to certain parts of the city. They would be allowed to operate in certain areas and not allowed in others, and there would be several ways to restrict brothels to certain areas. The zones within the District Plan could be applied to demarcate the location of brothels. For example, brothels may be prohibited in all residential zones and permitted in all or some business zones. Under this option, specific areas could also be created specifically for the purpose of demarcating where brothels are prohibited and where they are permitted. These areas would not necessarily entirely correspond with existing zones in the district plan.
62. This option would allow the Council greater control over where brothels locate by clearly stating the areas where brothels would be restricted to. Using existing district plan zones has advantages in that; there is an existing rationale for them (in the district plan), they are well established and understood by the public and their broad characteristics are described in the district plan. Creating specific areas to restrict brothels to would require the Council to identify specific areas where brothels would be allowed. Although there could be greater flexibility in where these areas could be located, the Council will need to ensure that there is a clear rationale behind how and why it chooses these specific areas over others. This option opens up the possibility of many debates about the specific boundaries of the specially created areas.
63. Under the option of restricting brothels to certain parts of the city, using the district plan zones would best meet the Council's objectives, through providing clear direction as to areas where brothels are allowed and where they are not. There is also an existing rationale for the zones, which are well established and understood by the public and the district plan zones' broad characteristics are described in the district plan.

2. Requiring brothels to be located a certain distance from sensitive sites

64. This option, as used by several councils⁸, would require the Council to clearly identify "sensitive sites", identify how large a 'brothels exclusion' area would be necessary around them (e.g. 100 metres, 200 metres) and clarify exactly how the distance would be measured (for example, 100m radius from the front door, or the centre of the premise or the centre of the land parcel).
65. The Council would need to ensure that there is a clear rationale behind how and why it chooses these specific sensitive sites over others as well as the size of the "brothels exclusion" distance and how the distance would be measured. Some of the facilities that could be identified as sensitive sites, such as community centres, places of worship and schools also have the potential to change location and therefore create uncertainty about where brothels can and cannot locate. Along with new 'sensitive' sites developing, this would mean a need to constantly keep the bylaw under review. Lastly, those going to sensitive sites may still need to pass by brothels in any event.

3. Requiring brothels to be located above the ground floor

66. This option would mean that brothels would not be permitted to operate from the ground floor and instead must operate from the first floor or higher. The rationale would be to reduce the risk of brothels causing a nuisance or offense to ordinary members of the public. However, it is difficult to support as a valid option for Christchurch City, as there have been no complaints with regards to brothels operating from ground floor premises. This option may also have implications under the NZBORA as this restriction may discriminate against disabled workers and/or their clients, and may increase costs for businesses if they have to renovate or move to ensure all workers and clients are able to access the premise.
67. The three options discussed above are not mutually exclusive and the Council can choose to combine elements of any of them as an option for a bylaw, whilst ensuring that bylaws should aim to provide certainty to the community about what is and is not permitted. Any bylaw to regulate the location of brothels should therefore provide a clear indication of where brothels may and may not be located.

⁸ For example the Far North District Council, Rodney District Council, and the Upper Hutt City Council.

17 Cont'd

68. Of the three high level options discussed in the above paragraphs, the first option would best achieve the Council's objectives as the zones within the District Plan provide a general guide to the sorts of areas (zones) in which commercial sexual services may be an appropriate activity. These zones are also subject to existing Plan Rules that control activities that are associated with the activities allowed in each zone. Using district plan zones to demarcate the areas in which the location of brothels are regulated provides a clear rationale linked to the existing planning zones, the rules associated with them and consistency with the activities allowed in these areas. Under this option there are several zoning options that are discussed below.
69. If the Council agrees that district plan zones should be used to demarcate the areas in which the location of brothels are regulated, the Council will need to determine in which zones brothels are permitted to locate and in which they are prohibited.
70. The zones within the District Plan and the Draft Central City Plan, are based on the type of activity that is permitted within the Plan. Attachments 2, 4, and 5 show the location of the various zones in relation to each other for areas outside the central city. Attachment 3 shows the location of the proposed zones in relation to each other within the central city. While staff are unaware of any brothels on Banks Peninsula, it is considered reasonable to provide some opportunity for brothels as a legitimate business activity on the Peninsula⁹.

Zoning options within the central city

71. In the previous options discussed staff have used existing district plan zones. The following options differ from the options discussed above in that the Draft Central City Plan and its proposed zones have not been approved by the Canterbury Earthquake Recovery Minister. The proposed zones and/or the activities proposed to be allowed in those zones may change with feedback from the Minister later this year. If this is the case it may be necessary for the Council to reconsider the areas within the Central City in which to permit the location of brothels based on either revised zones in the Central City Plan or alternatively based on existing zones in the District Plan. However the intention to limit this activity to the predominantly commercial areas of the Central City would be maintained.
72. The zoning proposed for the central city is similar to zones in other parts of the District, in that there are zones identified for businesses, living, cultural and entertainment activities. There are also zones set aside for conservation purposes and the hospital. The zones are discussed in detail in the paragraphs below.

Living, Cultural and Business 1 Zones

73. The proposed Living Zone in the Draft Central City Plan incorporates all the existing City Plan Zones (4A, 4B, and 4C) and are meant to provide for residential areas and activities within the central city area. The Cultural Zone provides for a diverse range of sites with multiple functions, including those of a cultural, educational, heritage or artistic character. The new proposed Business 1 Zone provides for local community centres encompassing small scale retail and offices servicing the surrounding residential areas. There are three Business 1 Zones proposed in the north east of the central city area. **Attachment 6** shows the Living and Cultural Zones in relation to the Business Zones.
74. As discussed in paragraph 82, given previous community feedback, it is considered appropriate to keep brothels out of residential areas. However, staff recommend that an exception be made for SOOBs.

*Central City Core and Central City Fringe Zones (refer to **Attachment 3**)*

⁹ There has never been any specific regulation of brothel location (or signage) in the Banks Peninsula towns.

17 Cont'd

75. The Central City Core and Central City Fringe Zones have been set aside for mainly retail and commercial activities, although compatible residential activities could also be located in these zones. Prior to the earthquakes these areas in the central city area comprised of retailing, offices and commercial services. The Draft Central City Plan proposes that these areas remain in primarily the same commercial use, although it is proposed that retail will be consolidated in the core of the central city area and there will be a greater mix of office and retail businesses in the Central City Fringe area surrounding it. These zones are also proposed to have some residential activities.
76. Staff recommend that brothels be allowed to locate in the proposed Central City Core and Central City Fringe Zones of the Draft Central City Plan (see the hatch area in **Attachment 3**). Pre-earthquakes, most operator run brothels were located in this area, which is also proposed to have similar activities and services to those present before the earthquakes. Discussions with an existing brothel owner (operating from his original premise) indicate that most operator-run brothels would prefer a central city location.
77. A variation to the Central City Core Zone proposal that Council may like to consider is that places of cultural or environmental sensitivity (e.g. Cathedral Square, the Avon River, and Latimer Square), and the emphasis given to the Retail Priority Area (including Cashel Street Mall) of the Draft Central City Plan, be excluded as areas for brothels (see **Attachment 7**). In effect, this may mean that it would be more practical for Council to exclude the entire Central City Core Zone as an area for brothels.

*Mixed Use Zone (refer to **Attachment 3**)*

78. The proposed Mixed Use Zone includes the B3, B3B and Central City Edge Zones in the existing City Plan. The Draft Central City Plan proposes to consolidate the transitional characteristics of the existing zones into the proposed zone which will have an extensive mix of residential and business activities. There are two large Mixed Use Zone areas, one in the south west and one in the south east of the central city area. There are several smaller Mixed Use Zones to the north of the central city area.
79. The two southern Mixed Use areas are located adjacent to the Central City Fringe Zone and much closer to the Central City Core Zone, whereas the smaller Mixed Use areas in the north of the central city are all located within residential areas. Staff therefore, recommend that brothels be allowed to locate in the two larger areas of the Mixed Use Zones south of the central city area (see the hatch area in **Attachment 3**) as brothels would not be incompatible with the activities proposed for these areas and the areas adjacent to them. Staff recommend that brothels **not** be allowed in the smaller Mixed Use Zone areas north of the central city.

Zoning options for areas outside the central city

*Living and Cultural Zones (refer to **Attachment 2**)*

80. In the City Plan, Living Zones provide for areas that cover the suburban residential environments of the city. Open space and landscape plantings comprise essential features of these environments. Cultural Zones include a diverse range of sites with multiple functions, including those of a cultural, educational, heritage or artistic character. In the Proposed Banks Peninsula District Plan, Residential Zones include several categories providing for a range of urban and rural residential activities in small settlements such as Wainui and in larger settlements such as Lyttelton.
81. Previous consultation in 2004 has indicated strong community opposition to brothels being located in residential areas. The 2009 consultation on the revocation of signage controls also highlighted opposition from some parts of the community to brothels being located in the suburbs near churches, schools and child care centres. Given previous community feedback, it is considered appropriate to keep brothels out of residential areas. However, as discussed in paragraph 94, staff recommend that an exception be made for SOOBs.

*Retail Business Zone (refer to **Attachment 2**)*

COUNCIL 22. 3. 2012

17 Cont'd

82. The Retail Business Zone encompasses City Plan Business Zones B1 and B2 and includes small scale shopping "strips" along road frontages in local centres, shopping malls and supermarkets adjacent to residential areas. This zone has higher restrictions placed on noise levels, on-site parking requirements and hours of operations which are consistent with residential activities.
83. The Retail Business Zone is situated adjacent to residential zones. The activities and services located in this zone are meant to provide for the communities living in the residential zones close by. Staff therefore recommend that brothels are not allowed in this zone.

*Commercial Business Zone (refer to **Attachment 2, Attachment 4 and Attachment 5**)*

84. The Commercial Business Zone encompasses City Plan Business Zones B3, B3B, BRP and B4 and includes the inner city industrial areas consisting of retail parks (large format retail centres) and the industrial buffer areas consisting of activities such as service and repairs businesses. Residential occupation in this zone is limited to on-site management or for security purposes, and higher levels of traffic generation is permitted. There are several areas of Commercial Business Zones located throughout the city. Several are sites with a single large business such as supermarkets. Many of these are surrounded by residential areas and some are adjacent to large industrial areas.
85. The Town Centre Zone in the Proposed Banks Peninsula District Plan falls under this category providing for a range of light service businesses including retailing, offices and community facilities. This zone includes established commercial centres such as Lyttelton and Akaroa, which are relatively well defined, as well as a number of smaller centres such as Governor's Bay and Diamond Harbour which are located within residential zones.
86. With regards to the City Plan, staff recommend that brothels are **not** allowed in the smaller areas within the Commercial Business Zone. The small size and location of these areas (some of which are adjacent to isolated industrial areas and some within residential areas) make them unsuitable for brothels to locate in. Staff recommend that brothels are allowed to locate within the larger commercial areas closer to the central city, within the Commercial Business Zone in the City Plan (refer to the hatched areas in **Attachment 4**).
87. With regards to suitable zones on Banks Peninsula, staff recommend that brothels are **only** allowed to locate in the Lyttelton Town Centre Zone (see the hatched area in **Attachment 5**). Staff do not consider Akaroa to be suitable as it is a much smaller town centre in comparison with Lyttelton. The Akaroa Town Centre also has a residential zone within it that is meant to provide for Akaroa's historic colonial heritage. Other than Akaroa, the remaining town centres are small and relatively isolated in that they are located within rural settlements to provide services to their immediate communities.

*Industrial Business Zone (refer to **Attachment 2**)*

88. The Industrial Business Zone encompasses City Plan Business Zones B4P, B4T, B5, B6 and B7, and includes heavier industrial businesses and large areas around the peripheral of the city, some in the more rural areas such as along Johns Road. Activities consist of light and heavy industry such as warehousing, processing plants, with high traffic generation including heavy traffic. Sites are characterised by large buildings and storage areas. Some have large landscaped areas around them to allow for stormwater treatment before discharge.
89. In the Proposed Banks Peninsula District Plan, the Industrial Zone falls under this category providing for a range of industrial activities including for marine engineering services. There are two industrial zones in the located in Lyttelton and Church Bay. The Lyttelton Industrial Zone is adjacent to the Town Centre and much larger than the Church Bay Industrial Zone which is located within a residential area.

17 Cont'd

90. Staff do not recommend that brothels are allowed to locate in the Industrial Business Zones. These areas tend to be located in the more peripheral areas of the city, potentially raising issues of safety for sex workers and concerns about the security of other businesses that only operate during day-time hours. The site in Lyttelton is not considered suitable for same reasons, whereas the Church Bay site is located within a rural settlement and within a residential area.

Community views

91. Previous consultations on this issue have indicated strong community opposition to brothels being located in residential areas. When the 2004 Bylaw was being developed, the Council received around 1,500 submissions: 61 percent of submitters considered that brothels should only be allowed in the central business district or within the four avenues; another 17 percent considered they could be in other commercial or industrial zones. (At this time, the Council district did not include Banks Peninsula and so consideration was not given to towns such as Lyttelton.) Some submitters suggested that the Council should define a "red light" area within the central city to enable people to avoid it; others considered this would draw attention to the industry and might suggest that the Council was promoting it. The 2009 consultation on the revocation of signage controls also highlighted opposition from some parts of the community to brothels being located in the suburbs near churches, schools and child care centres. Formal comment sought from the public on the Draft Central City Plan undertaken in August-September 2011 elicited a number of comments about the location of brothels, with some people expressing a preference for no brothels and others suggesting they be concentrated in a small area.
92. In summary, staff have considered the areas in which brothels should be allowed to establish, with reference to the District Plan and the Draft Central City Plan and bearing in mind the nature of the activity. Staff have also taken into consideration the views of the community obtained through previous consultation. In general terms, it is recommended that:
- Other than SOOBs, brothels **not** be allowed within residential areas, or in small retail strips and shopping centres where the surrounding environment is predominantly residential.
 - Brothels should be allowed within:
 - a selected area of the Commercial Business Zone in the City Plan;
 - the Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan;
 - the Central City Core and Central City Fringe Zones of the Draft Central City Plan and;
 - two areas in the Mixed Use Zones of the Draft Central City Plan.

Exceptions for SOOBs and existing premises

93. Staff recommend that an exception be made for small owner-operated brothels as these businesses are already operating across the city without any obvious problems. Making small owner-operated brothels subject to the same location requirements as other brothels could drive them underground, contrary to the intention of the PRA, and create the risk of further judicial review.
94. With regards to existing premises outside the zones allowed by the proposed bylaw, the Council can choose to provide a timeframe (for example five years) for those businesses to relocate, after which they would be in breach of the bylaw. However staff consider this to be a high risk option. Existing premises were originally exempt from the 2004 Bylaw. There have been no complaints about pre-earthquake operator-run brothels. Specifically, there have been no complaints about the remaining pre-earthquake brothel still operating at its original premise at 464 Worcester St. Staff consider that there is little reason to require existing premises to meet the proposed location requirements of the bylaw and that it is reasonable to make an exception for existing businesses of prostitution that are currently located out of the proposed areas. Existing brothels should be allowed to continue operating, regardless of location.¹⁰ However, consideration should be given to whether the Council should provide a limited period of time for these existing brothels to relocate, after which the bylaw would apply and they would need to cease to operate

¹⁰ As noted earlier, there are only two brothels known to be operating: one at 464 Worcester Street and the other at 484 Tuam Street.

17 Cont'd

Signage advertising commercial sexual services

95. The Council determined at its 22 September 2011 meeting that a bylaw is the most appropriate way to address the perceived problem of signage advertising commercial sexual services and to prevent the public display of signage that is likely to cause a nuisance or serious offence to ordinary members of the public, or is incompatible with the existing character or use of certain areas in the Council's district.
96. The earthquakes have created complexity in identifying areas in which signage advertising commercial sexual services would not be out of character. The Draft Central City Plan and rebuild will change the original nature of the district. Staff recommend that the areas in which signage be permitted align with the proposed areas for the location of brothels, as set out in Attachments 3, 4 and 5 and discussed above. This includes a selected area of the Commercial Business Zone in the City Plan, the Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan and the proposed Central City Core, Central City Fringe and two areas in the Mixed Use Zones of the Draft Central City Plan. As there is no evidence that SOOBs have ever sought to provide signage in suburban areas, a prohibition in the rest of the district is considered reasonable.
97. In order to reduce the risk of signage causing offence to ordinary members of the public, it is proposed that any bylaw regulate signage by requiring that only one sign be displayed and that signs:
- be attached to the premises at which the commercial sexual services are provided;
 - clearly display the number of the premises to which the sign relates;
 - not be offensive;
 - not display any pictorial image;
 - not exceed 0.3 square metres in surface area; and
 - not be illuminated by any flashing light.
98. The proposed controls are very similar to those in the 2004 Bylaw. The 2004 Bylaw also required that any signs be attached to the premises they are advertising and provided for no pictorial images on signs, a maximum sign size and no illumination of signs. Continuing these controls would ensure that any sign a business uses will be relatively small and discreet. Applying similar controls to the proposed bylaw would also mean that any new bylaw should be easily applied and understood.
99. There are two proposed differences from the 2004 Bylaw. First, the 2004 Bylaw enabled the display of two signs where a building had multiple street frontages. It is considered that a single sign should be sufficient. Second, the 2004 Bylaw only enabled the sign to include the name of the business, the name of the person conducting the business and the street number. Legal advice suggests that this requirement may be too restrictive in that it effectively prohibits the advertising of commercial sexual services. It is proposed that this requirement be replaced with a new requirement that the sign not be offensive.

PREFERRED OPTIONS

100. It is proposed that the bylaw require that all brothels, other than existing known brothels and SOOBs, be located within the Central City Core, Central City Fringe and two areas in the Mixed Use Zones of the Draft Central City Plan (see **Attachment 3**), a selected area of the Commercial Business Zone in the City Plan (see **Attachment 4**), and the Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan (see **Attachment 5**).

17 Cont'd

101. The preferred option for addressing the perceived problem with signage advertising commercial sexual services is to develop a bylaw that prohibits signage outside the areas mapped in Attachments 3, 4 and 5 and regulates signage within these areas by requiring that only one sign be displayed, and that signs:

- be attached to the premises at which the commercial sexual services are provided;
- clearly display the number of the premises to which the sign relates;
- not be offensive;
- not display any pictorial image;
- not exceed 0.3 square metres in surface area; and
- not be illuminated by any flashing light.

ASSESSMENT OF OPTIONS

The Preferred Option

102. Brothels would be allowed in a selected area of the Commercial Business Zone in the City Plan, the Lyttelton Town Centre Zone in the Proposed Banks Peninsula District Plan and the proposed Central City Core, Central City Fringe and two areas in the Mixed Use Zones of the Draft Central City Plan, with exceptions to SOOBs and existing brothels. Signage advertising commercial sexual services would be prohibited outside these areas and regulated within these areas.

	Benefits (current and future)	Costs (current and future)
Social	<p>Reduces the risk of brothels being a nuisance or causing serious offence to the public.</p> <p>Reduces the risk of signs advertising commercial sexual services being a nuisance or causing serious offence to the public.</p> <p>Clear and unambiguous information for the public on where brothels (other than SOOBs) are permitted to locate.</p>	<p>Some may consider that allowing the location of SOOBs in residential areas carries social costs.</p>
Cultural	<p>Nil</p>	<p>Nil</p>
Environmental	<p>Brothels allowed to locate in areas which have broadly compatible District Plan zones.</p>	<p>Nil</p>
Economic	<p>Existing brothels outside the defined areas are not required to close or relocate.</p>	<p>Restricts brothel businesses from operating outside these zones which may affect their business profitability.</p> <p>Restricts brothels ability to advertise commercial sexual services using signage which may affect their business profitability.</p>

17 Cont'd

Extent to which community outcomes are achieved:

Providing clear areas where brothels are allowed to locate and advertise commercial sexual services will help ensure the location of brothels is compatible with the character and use of areas within the district and does not cause offence to ordinary members of the public, contributing to a safer and better designed city.

Impact on the Council's capacity and responsibilities:

There will likely be little change to the Council's administrative responsibilities. Clear guidance around the location of brothels may provide a benefit to the Council's Enforcement Officers who respond to complaints about the location and operation of brothels. Excluding existing, known brothels and SOOBs avoids the likely issues and potential legal consequences of trying to close them down. Council can still use generic rules in the District Plan as a basis for enforcement as well as bylaw regulations.

Effects on Maori:

None that are significantly different from the rest of the community.

Consistency with existing Council policies:

Not applicable

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

The New Zealand Police advised that they are unaware of any problems associated with the location of brothels, or indeed any nuisances from such sources. Community and Public Health representatives, who operate as Brothel Inspectors under the PRA, advised that they do not consider there are issues with either the location of brothels or signage.

Some brothel operators advised they are unlikely to install further signage as they wish to keep signage discrete. The local branch of the Prostitutes Collective advised that, following the February 22 earthquake, many sex workers are now working in SOOBs and that, in their view, many sex workers are unlikely to return to working in operator-run brothels. One brothel owner who is still operating has informed that most businesses would prefer to reopen in the central city when it is open.

Previous consultations on this issue have indicated strong community opposition to brothels being located in residential areas. Formal comment sought from the public on the Draft Central City Plan undertaken in August-September 2011 elicited a number of comments about the location of brothels. Many people expressed their concern about brothels lowering the tone of the central city, with some expressing a preference for no brothels and others suggesting they be concentrated in a small area.

Other relevant matters:

None

Maintain the Status Quo (if not the preferred option)

103. The location of brothels and signage advertising commercial sexual would continue to be subject to the same district plan rules that apply to all businesses.

	Benefits (current and future)	Costs (current and future)
Social	Nil	There may be a risk of brothels being a nuisance or causing serious offence to the public in non-residential areas. There may be a risk of signs advertising commercial sexual services being a nuisance or causing serious offence to the public.
Cultural	Nil	Nil
Environmental	Nil	Nil
Economic	Nil	Nil

17 Cont'd

Extent to which community outcomes are achieved:

Ability of brothels to be located anywhere, including residential areas, other than SOOBs, are permitted to locate may increase perceptions of some parts of the city being particularly unsafe, which does not support the community outcome of being a safer city.

Impact on the Council's capacity and responsibilities:

There would be no change to the Council's administrative responsibilities. The Council's Enforcement Officers who respond to complaints about the location and operation of brothels will continue to base decisions on the district plan. However, there is the possibility of more complaints if brothels choose to relocate out of the central city and/or residential areas.

Effects on Maori:

None that are significantly different from the rest of the community.

Consistency with existing Council policies

Not applicable

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

The New Zealand Police advised that they are unaware of any problems associated with the location of brothels, or indeed any nuisances from such sources. Community and Public Health representatives, who operate as Brothel Inspectors under the PRA, advised that they do not consider there are issues with either the location of brothels or signage.

Some brothel operators advised they are unlikely to install further signage as they wish to keep signage discrete. The local branch of the Prostitutes Collective advised that, following the February 22 earthquake, many sex workers are now working in SOOBs and that, in their view, many sex workers are unlikely to return to working in operator-run brothels. One brothel owner who is still operating has informed that most businesses would prefer to reopen in the central city when it is open.

Previous consultations on this issue have indicated strong community opposition to brothels being located in residential areas. Formal comment sought from the public on the Draft Central City Plan undertaken in August-September 2011 elicited a number of comments about the location of brothels. Many people expressed their concern about brothels lowering the tone of the central city, with some expressing a preference for no brothels and others suggesting they be concentrated in a small area.

Other relevant matters:

None

COUNCIL 22. 3. 2012

18. VBASE LIMITED – SUPPLEMENTARY REPORT

General Manager responsible:	General Manager Corporate Services, DDI 941-8528
Officer responsible:	Corporate Finance Manager
Author:	Ian Thomson, Solicitor

PURPOSE OF REPORT

1. To provide further information sought with regard to Vbase Limited (Vbase).

EXECUTIVE SUMMARY

2. A report on several matters relating to Vbase was included in the agenda for the Council meeting on 9 February 2012.
3. A number of issues had been raised with regard to the report prior to the meeting. The Council resolved to defer the matter until these were dealt with.
4. Those issues are referred to in this report.

FINANCIAL IMPLICATIONS

5. There are no financial implications arising from the further information contained in this report.

LEGAL CONSIDERATIONS

6. The changes proposed to be made to the Vbase Constitution are set out in the report to the 9 February 2012 meeting. A copy of that report is included as the Background in this report.
7. "Tracked" and "clean" copies of the Constitution are also attached (**Attachments 3 and 4**).
8. For the purposes of a vote on whether or not to revoke the current Constitution and adopt the new one, a majority of 75 percent of Councillors present at the meeting and voting is required.
9. Prior to the 9 February meeting the Legal Services Unit obtained external advice from Simpson Grierson on whether or not the Vbase directors could take part in any discussion and voting. A copy of that advice is attached (**Attachment 1**).
10. It is Simpson Grierson's view that the directors may take part in the decision making on the proposed amendments to the Company's Constitution. They may also may participate in the decision making on the approval of other Vbase matters, provided that they are satisfied there is no risk of predetermination in the particular circumstances.
11. External advice was also obtained with regard to the matter of the appointment of directors in breach of the Constitution. This was that the practical implications (given that the Council is the sole shareholder of Vbase) are limited. A copy of the advice is attached (**Attachment 2**).
12. If the staff recommendations in this report are adopted the directors will validate decisions made by them in December 2011.
13. Council staff are now managing Vbase. Effectively this means that whilst the Company still exists the directors will take advice from staff before making any decisions.
14. Further, if the changes to the Constitution are adopted, certain decisions will require the approval of the Council before they can be made. For example, the Council is to approve the application of insurance proceeds in the rebuild or repair of the Company's assets.
15. The result is that normal commercial principles will not always be applicable to the Vbase situation. It is incorporated as a Council Controlled Organisation but, as indicated earlier, its affairs are being managed by the Council. At some point in the future, once the Company's business has recovered from the effects of the earthquakes, the Council will have the opportunity to determine whether or not Vbase is restored to its previous operational state.

COUNCIL 22. 3. 2012

18 Cont'd

STAFF RECOMMENDATION

Staff do not recommend that any changes be made to the resolutions contained in the report dated 9 February 2012. It is therefore recommended that the Council:

- (a) Defers the requirement that Vbase Limited repays an advance of \$4.5 million to the Council to 20 April 2030 or earlier upon sale of the asset in respect of which the advance was made.
- (b) Authorises the Chairperson of the Audit and Risk Management Subcommittee to provide a letter of comfort to the Board of Vbase Limited.
- (c) Revokes the Constitution of Vbase Limited current at the date of this resolution and adopts a new Constitution amended as set out in the staff report considered by the Council at this meeting.

BACKGROUND

REPORT FROM COUNCIL MEETING OF 9 FEBRUARY 2012

PURPOSE OF REPORT

1. To deal with several matters with regard to Vbase Ltd.

EXECUTIVE SUMMARY

2. Since June 2011 the Council has assumed responsibility for the operation of Vbase Ltd, a Council controlled organisation.
3. Arising from that are a number of administrative matters for which resolutions of the Council are required.
4. These include deferring the repayment of an advance to Vbase and amendments to the company's constitution.
5. Details are set out in this report.

FINANCIAL IMPLICATIONS

6. The Council advanced funds to Vbase over a number of years. At 30 June 2011 these comprised:
 - (a) a current liability of \$4.5m repayable in full on 30 June 2012;
 - (b) a non-current liability of \$29.723m scheduled to be repaid in annual amounts commencing in April 2024, with repayment in full completed by 20 April 2030.
7. It is proposed that the Council resolves to waive the obligation to repay the sum of \$4.5m due on 30 June 2012.
8. At the time the funds were advanced, it was expected that the proposed extension of the convention centre would proceed. A decision on the rebuild of the convention centre will be made by Council during the 2012/13 Annual Plan deliberations in the context of the Central City Plan. In addition the company's financial position is such that repayment on the due date would cause some difficulty.
9. An audit requirement is that the chairperson of the Council's audit and risk management subcommittee provides a letter of comfort to the directors of Vbase advising that repayment will be deferred to 20 April 2030 or earlier, upon sale of the asset in respect of which the advance was made.

18 Cont'd

LEGAL CONSIDERATIONS

10. Since June 2011 Council staff have carried out a review of the Vbase business and prepared a facilities management agreement that will be signed shortly.
11. This work also included a review of the company's constitution. As a result it is proposed that a number of changes be made to reflect the new environment that Vbase is now operating in.
12. The changes are:

- (a) clause 14.1

"the number of directors shall be determined by the major holder from time to time."

The words "until otherwise so determined, the minimum number of directors (other than alternates) shall be five" have been deleted.

The "major holder" is the Council as the owner of all the shares in Vbase;

- (b) clause 14.2.3

This clause (set out below) has been deleted;

"Notwithstanding any provision to the contrary herein contained at least two of the directors shall not be members or employees of the local authority who is a share holder. If a person who is a director becomes a member or employee of a local authority who is a shareholder in breach of this provision such person shall forthwith resign as a director of the company."

The removal of this clause flows from the deletion of 14.2.3.

- (c) clause 14.4.3

This clause (set out below) has been deleted:

"If that director is appointed in breach of provisions of clause 14.2.3 so that more than the maximum allowable number of directors are members or employees of a local authority. Unless the major holder directs to the contrary the last appointed director who breaches this provision shall retire from office."

- (d) clause 14.8

This is a new clause (set out below):

"If the company is a wholly owned subsidiary, a director may (when exercising powers or performing duties as a director) act in a manner which he or she believes is in the best interests of the company's holding company even though it might not be in the best interests of the company."

A "holding company" is a body corporate. The Council is a body corporate established under the Local Government Act 2002 and therefore is included in the definition of "holding company".

- (e) clause 18.5.1 has been amended as set out below. The words in bold are those added to the clause.

"An obligation which, if entered into by a natural person would, by law, be required to be by deed, maybe entered into on behalf of the company in writing signed under the name of the company by:

COUNCIL 22. 3. 2012

18 Cont'd

- (i) two or more directors; or
 - (ii) one or more attorneys appointed by the company in accordance with clause 18.1; or
 - (iii) **one or more persons or class of persons** expressly authorised by the board for that purpose in respect of all transactions or particular transactions **provided that where one person is signing that person's signature is witnessed;**
- (f) clause 18.6

This is a new clause (as set out below):

"The board has responsibility for the management of the company and its business but the following matters shall require the approval of the shareholder:

- 18.6.1 application of insurance proceeds in the rebuild or repair of the company's assets;
- 18.6.2 entry into any arrangement, contract or transaction outside the ordinary course of the company's business or otherwise than on arm's length terms;
- 18.6.3 entry into any arrangement, contract or transaction for the purchase of materials, works and/or services for an amount exceeding \$500,000 where such materials, works and/or services are not budgeted for in the company's annual budget; and
- 18.6.4 the giving of notice of termination of any arrangements, contracts or transactions which are material to the company's business, or materially vary in any such arrangements, contracts or transactions".

13. A resolution to amend the Vbase constitution requires the support of at least 75% of Councillors.

CONSULTATION FULFILMENT

14. There is no requirement to consult in respect of the matters referred to in this report.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Defers the requirement that Vbase Ltd repays an advance of \$4.5m to the Council to 20 April 2030 or earlier upon sale of the asset in respect of which the advance was made.
- (b) Authorises the chairperson of the audit and risk management subcommittee to provide a letter of comfort to the board of Vbase Ltd.
- (c) Revokes the constitution of Vbase Ltd current at the date of this resolution and adopts a new constitution amended as set out in the staff report considered by the Council at this meeting.

COUNCIL 22. 3. 2012

19. CEO PERFORMANCE REVIEW AND REMUNERATION SUBCOMMITTEE 7 MARCH 2012 - MINUTES

Attached.

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
Author:	Brent Pizzey, solicitor

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".

COUNCIL 22. 3. 2012

20 Cont'd

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.

20 Cont'd

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.

20 Cont'd

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.

21. NOTICES OF MOTION

22. RESOLUTION TO EXCLUDE THE PUBLIC

Attached.

THURSDAY 22 MARCH 2012

COUNCIL

RESOLUTION TO EXCLUDE THE PUBLIC

Section 48, Local Government Official Information and Meetings Act 1987.

I move that the public be excluded from the following parts of the proceedings of this meeting, namely items 23, 24, 25, 26 and 27, and that the Crown Observer, Kerry Marshall, be permitted to remain in the room for the consideration of these items.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	GENERAL SUBJECT OF EACH MATTER TO BE CONSIDERED	REASON FOR PASSING THIS RESOLUTION IN RELATION TO EACH MATTER	GROUND(S) UNDER SECTION 48(1) FOR THE PASSING OF THIS RESOLUTION
23.	Confirmation of Minutes: 23.2.2012 and 8.3.2012)	
24.	Noble Investment Village Briefing)	
25.	Chairpersons Report of a Meeting of the Hagley/Ferrymead Community Board: Meeting of 14 March 2012)	
26.	Plan Change 32: Waimakariri River Stopbank Floodbank Land Use Controls – Commissioner’s Report and Recommendation) GOOD REASON TO WITHHOLD EXISTS) UNDER SECTION 7	SECTION 48(1)(a)
27.	CEO Performance Review and Remuneration Subcommittee: Meeting of 7 March 2012)	

COUNCIL 22. 3. 2012

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public are as follows:

ITEM	REASON UNDER ACT	SECTION	PLAIN ENGLISH REASON	WHEN REPORT CAN BE RELEASED
23.	To enable the Council to deliberate in private on a recommendation where a right of appeal to a Court against Council's decision exists.	48(1)(d) and 48(2)(a)(i)	To enable the Council to consider its Planning Officer's report in private without influence from the media or any party to the proceedings. To enable the Council to notify its decision to the parties to the plan change before the matter is reported in the media.	The report can be released following the period in which parties to the proceedings will receive notification of the Council's decision in the ordinary course of the post.
23.	Protection of the privacy of individuals	7(2)(a)	The Board need to discuss specific individuals for inclusion or exclusion form the Joint Advisory Group.	After the Board reaches its decision, and the potential appointees have been advised.
23.	Protection of the privacy of individuals	7(2)(a)	The report contains financially sensitive information which, if released, can affect the course of negotiations with the vendor.	The report can be released following settlement of the land purchase
24.	Maintain Legal Professional Privilege	7(2)(g)	To enable the Council to receive legal advice	Not known at this time
25.	To Protect the Privacy of Natural Persons	7(2)(a)	Caterpillar Tours Limited have provided commercially sensitive accounting information.	12 months after consideration by Council – an earlier release may adversely effect the liquidation process.
25.	Protection information likely to prejudice the commercial position	7(2)(b)(ii)	Caterpillar Tours Limited have provided information which could have a bearing on prospective sale.	12 months after consideration by Council – an earlier release may adversely effect the liquidation process.
26.	To enable the Council to deliberate in private on a recommendation where a right of appeal to a Court against the Council's decision exists.	48(1)(d) and 48(2)((a)(i)	To enable the Council to consider its Commissioners' report in private without influence from the media or any party to the proceedings. To enable the Council to notify its decision to the parties to the plan change before the matter is reported in the media.	The report can be released following the period in which parties to the proceedings will receive notification of the Council's decision in the ordinary course of the post.
27.	Maintain legal professional privilege	7(2)(g)	To enable the Council to receive legal advise.	

Chairman's

Recommendation: That the foregoing motion be adopted.

Note

Section 48(4) of the Local Government Official Information and Meetings Act 1987 provides as follows:

“(4) Every resolution to exclude the public shall be put at a time when the meeting is open to the public, and the text of that resolution (or copies thereof):

- (a) Shall be available to any member of the public who is present; and
- (b) Shall form part of the minutes of the local authority.”