

## **Regulatory Performance Committee**

### **AGENDA**

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#### **Notice of Meeting:**

An ordinary meeting of the Regulatory Performance Committee will be held on:

**Date:** Wednesday 7 March 2018  
**Time:** 9am  
**Venue:** Committee Room 1, Level 2, Civic Offices,  
53 Hereford Street, Christchurch

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#### **Membership**

Chairman	Councillor David East
Deputy Chairman	Councillor Jamie Gough
Members	Councillor Jimmy Chen
	Councillor Anne Galloway
	Councillor Tim Scandrett
	Councillor Sara Templeton

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**1 March 2018**

#### **Principal Advisor**

Leonie Rae  
General Manager Consenting &  
Compliance

Aidan Kimberley  
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## REGULATORY PERFORMANCE COMMITTEE - TERMS OF REFERENCE

<b>Chair</b>	Councillor East
<b>Membership</b>	Councillor Gough (Deputy Chair), Councillor Chen, Councillor Galloway, Councillor Scandrett, Councillor Templeton
<b>Quorum</b>	Half of the members if the number of members (including vacancies) is even, or a majority of members if the number of members (including vacancies) is odd.
<b>Meeting Cycle</b>	Monthly
<b>Reports To</b>	Council

### ***Responsibilities***

The focus of the Regulatory Performance Committee is Council's regulatory and compliance functions. The Committee seeks to foster:

- active citizenship, community participation and community partnerships
- innovation and creativity
- active citizenship, community participation and community partnerships
- innovation and creativity
- relationship with key partner organisations and agencies
- engagement with community boards on bylaw development and review

The Regulatory Performance Committee considers and reports to Council on issues and activities relating to:

- Council's regulatory and compliance functions
- Council's regulatory and compliance functions under:
  - Resource Management Act 1991 and related legislation
  - Building Act 2004 and the New Zealand Building Code
  - Dog Control Act 1996
  - Sale and Supply of Alcohol Act 2012
  - Local Government Act 1974 and Local Government Act 2002
  - Historic Places Act 1980
  - District Plan
  - Bylaws
  - Other regulatory matters
- District planning
- Approval and monitoring of Council's list of hearings commissioners under the Resource Management Act 1991.
- relationship with key partner organisations and agencies
- engagement with community boards on bylaw development and review



Part A	Matters Requiring a Council Decision
Part B	Reports for Information
Part C	Decisions Under Delegation

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## **1. Apologies**

At the close of the agenda no apologies had been received.

## **2. Declarations of Interest**

Members are reminded of the need to be vigilant and to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

## **3. Confirmation of Previous Minutes**

That the minutes of the Regulatory Performance Committee meeting held on [Wednesday, 7 February 2018](#) be confirmed (refer page 6).

## **4. Public Forum**

A period of up to 30 minutes may be available for people to speak for up to five minutes on any issue that is not the subject of a separate hearings process.

It is intended that the public forum session will be held at <Approximate Time>

## **5. Deputations by Appointment**

There were no deputations by appointment at the time the agenda was prepared.

## **6. Petitions**

There were no petitions received at the time the agenda was prepared.

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## Regulatory Performance Committee OPEN MINUTES

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**Date:** Wednesday 7 February 2018  
**Time:** 10.35am  
**Venue:** Committee Room 1, Level 2, Civic Offices,  
53 Hereford Street, Christchurch

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**Present**  
Chairman Councillor David East  
Deputy Chairman Councillor Jamie Gough  
Members Councillor Jimmy Chen  
Councillor Sara Templeton

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7 February 2018

**Principal Advisor**  
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- Part A**      **Matters Requiring a Council Decision**  
**Part B**      **Reports for Information**  
**Part C**      **Decisions Under Delegation**
- 

The agenda was dealt with in the following order.

**1. Apologies**

**Part C**

Apologies were accepted from Councillors Galloway and Scandrett.

Councillor Chen/Councillor Gough

Carried

**2. Declarations of Interest**

**Part B**

There were no declarations of interest recorded.

**3. Confirmation of Previous Minutes**

**Part C**

**Committee Resolved RPCM/2018/00001**

**Committee Decision**

That the open and public excluded minutes of the Regulatory Performance Committee meeting held on Wednesday, 13 December 2017 be confirmed.

Councillor Templeton/Councillor Gough

Carried

**4. Public Forum**

**Part B**

There were no public forum presentations.

**5. Deputations by Appointment**

**Part B**

**5.1 Deputation – David Lynch**

David Lynch, local resident, addressed the Committee regarding the consenting of high-density housing projects in the city.

**Committee Resolved RPCM/2018/00002**

**Part B**

The Committee referred Mr Lynch's deputation to Resource Consenting staff for response.

Councillor Gough/Councillor Templeton

Carried

## 6. Presentation of Petitions

### Part B

There was no presentation of petitions.

## 7. Building Consenting Unit Update

Committee Resolved RPCM/2018/00003

### Part C

That the Regulatory Performance Committee receives the information in this report.

Councillor Chen/Councillor Gough

Carried

## 8. Regulatory Compliance Unit Status Report

Committee Resolved RPCM/2018/00004

### Part C

That the Regulatory Performance Committee receive the information in the report.

Councillor Templeton/Councillor Chen

Carried

## 9. Resource Consents Monthly Report - November and December 2017

Committee Resolved RPCM/2018/00005

### Part C

That Regulatory Performance Committee receive the information in this report.

Councillor Chen/Councillor Templeton

Carried

Meeting concluded at 11:21am.

CONFIRMED THIS 7<sup>th</sup> DAY OF MARCH 2018

COUNCILLOR DAVID EAST  
CHAIRMAN

## 7. Review of the Brothels (Location and Commercial Sexual Services Signage) Bylaw 2013

Reference: 18/18799

Contact: Teena Crocker Teena.Crocker@ccc.govt.nz

941 8551

### 1. Purpose and Origin of Report

#### Purpose of Report

- 1.1 The purpose of this report is for the Regulatory Performance Committee to report to Council about the first stage of the review of the Brothels (Location and Commercial Sexual Services Signage) Bylaw 2013 (the brothels bylaw), and to recommend that determinations be made by the Council in accordance with statutory requirements.

#### Origin of Report

- 1.2 The Local Government Act 2002 (LGA) requires bylaws to be reviewed within certain timeframes. This report is to facilitate compliance with statutory bylaw review requirements.

### 2. Significance

- 2.1 The decisions in this report are of low significance in relation to the Christchurch City Council's Significance and Engagement Policy.
  - 2.1.1 The level of significance was determined by the limited impact of the decisions in this report. The decisions are required to meet statutory bylaw review requirements.
  - 2.1.2 A subsequent report will discuss possible changes and public consultation on the bylaw.

### 3. Staff Recommendations

That the Regulatory Performance Committee recommends that the Council:

1. Note that the Local Government Act 2002 requires bylaws to be reviewed within certain timeframes, and that the Brothels (Location and Commercial Sexual Services Signage) Bylaw 2013 must be reviewed by 28 March 2018;
2. Note that in order to undertake a review of a bylaw, the Local Government Act 2002 requires a council to make a determination under section 155; and
3. Note that a subsequent report discussing possible changes to the bylaw, and public consultation on the bylaw, will be presented to the Regulatory Performance Committee and Council in July 2018.
4. Resolves that, in reliance on the information in this report, a bylaw is the most appropriate way of addressing perceived problems relating to brothel location and signage, in accordance with section 155(1) of the Local Government Act 2002.

### 4. Key Points

- 4.1 This report supports the [Council's Long Term Plan \(2015 - 2025\)](#):
  - 4.1.1 Activity: Strategic Planning and Policy
    - Level of Service: 17.0.19 Bylaws and regulatory policies are reviewed to meet statutory timeframes and changing needs

- 4.2 This is a five-year review. A new bylaw must be reviewed within five years in the first instance, and at least once every ten years thereafter. In order to meet the statutory requirements for review, the brothels bylaw must be reviewed by 28 March 2018. In order to review a bylaw, the LGA requires a council to determine that a bylaw is the most appropriate way of addressing the perceived problem(s) under section 155.
- 4.3 This report only concerns the review. A subsequent report will recommend any bylaw changes and consultation on those changes (consultation is still required, even if there are no changes).
- 4.4 Given the priority of the Long Term Plan consultation process in the first half of 2018, consultation on this (and other bylaws) will occur later in the year.
- 4.5 This report concludes that a bylaw is still needed, and is the most appropriate way of addressing perceived problems associated with the location of brothels and the advertising of commercial sexual services.

## 5. Context/Background

### Bylaw-making powers and enforcement tools

- 5.1 The brothels bylaw is made under the Prostitution Reform Act 2003 (PRA), which empowers councils to make bylaws to:
  - prohibit or regulate signage relating to commercial sexual services (CSS); and to
  - regulate the location of brothels.
- 5.2 The bylaw-making power allows councils to confine brothels to certain areas of the district, where there is good reason for this, but does not allow prohibiting them completely. There is no power to regulate other location-related aspects of the sex industry (such as street-based sex work), only the location of brothels.
- 5.3 The PRA states that a bylaw made under the PRA “must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002”. For the purposes of enforcement, a bylaw made under the PRA should be treated as if it were a bylaw made under section 145 of the LGA.
- 5.4 This means the penalty for breaching the bylaw is prosecution, with a fine on conviction of up to \$20,000. There is no infringement (instant fines) regime available for breaching a bylaw made under the LGA. However, other enforcement tools under the LGA may be used, where relevant.

### Coverage of the brothels bylaw

- 5.5 The brothels bylaw has been in force since 2013. In summary, the bylaw regulates brothel location and commercial sexual services signage in the following ways:

Location	<ul style="list-style-type: none"> <li>• It allows brothels to locate in limited parts of the district (set out in maps)</li> <li>• It prohibits brothels from operating in all other locations</li> <li>• The mapped brothels-allowed areas are based on commercial zones in the 2013 district planning documents, with ‘buffer zones’ to separate residential areas and schools and pre-schools from areas where brothels are allowed</li> <li>• The location restrictions focused on larger, operator-run brothels</li> <li>• Small owner-operated brothels (SOOBs) are not restricted by zones</li> <li>• SOOBs are prohibited from multi-unit residential complexes</li> </ul>
Signage	<ul style="list-style-type: none"> <li>• It allows signage associated with brothels in brothel-allowed areas</li> <li>• It restricts the placement, content and size of signage</li> <li>• It prohibits all other signage advertising commercial sexual services</li> </ul>

- 5.6 Analysis relating to the brothels bylaw is covered in more detail in the attached section 155 analysis.
- 5.7 Generally, in this report, 'brothel' is used to describe commercial brothels, while 'SOOB' is used to refer to the home-based provision of commercial sexual services, or to a small business. The definition of SOOB is set out in the PRA, and involves a premises with no more than four sex workers, and where each worker retains control over their earnings from prostitution.

#### **Brothel-allowed areas in the bylaw**

- 5.8 The bylaw-making power allows councils to regulate, but not prohibit, the location of brothels.
- 5.9 The brothels-allowed areas were based on the draft Central City Plan, the Christchurch City Plan, and the proposed Banks Peninsula District Plan in late 2012. These documents have now been replaced with the Christchurch District Plan (the District Plan).
- 5.10 The brothels bylaw allows brothels to operate only in the larger commercial business zones (the smaller business zones were not included in the mapped areas). An explanatory note in the bylaw clarifies that:
- where commercial zones adjoined or were close to schools, preschools or residential areas (and were not suitably buffered by a major road), the zones were reduced to provide better separation of brothels from children and residential activity; and
  - other parts of some zones were also removed when the result of the 'buffering' left only small pockets of properties.
- 5.11 Although there have been changes in the planning zones on which the 2013 bylaw was based, the areas are still a mixture of commercial and industrial zones, not residential zones.
- 5.12 The brothels-allowed areas were very contentious during consultation on the brothels bylaw. As there have been very few complaints about the location of brothels, or inquiries about establishing brothels outside of the allowable areas, there may be no need to change or update the areas, despite the District Plan zoning designations being different to what they were in 2013. Although there have been changes, the areas are still a mixture of commercial and industrial zones, not residential zones.

#### **Brothel locations and interaction with the District Plan**

- 5.13 As a brothel is a business, all the usual requirements and restrictions in the District Plan apply.
- 5.14 A brothel that is located within a brothel-allowed area in the brothels bylaw must comply with the District Plan requirements in that location. It may be considered a permitted activity, or may require a resource consent. This will depend on the zoning and relevant rules, just like any other business.
- 5.15 If a brothel requires a resource consent, section 15 of the PRA applies. This requires that a council must assess a resource consent application for land-use relating to a business of prostitution in relation to whether it:
- 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
  - is incompatible with the existing character or use of the area in which the land is situated.

#### **Signage advertising Commercial Sexual Services in the bylaw**

- 5.16 Signage relating to commercial sexual services is prohibited in areas outside of the brothel-allowed areas, and in any brothel-allowed area if the sign can be seen from a school.
- 5.17 Signage in the brothel-allowed areas is restricted by the bylaw. It must be attached to the premises and clearly display the number of the premises, and must not exceed 0.3m<sup>2</sup>, display an

image, be offensive, or be illuminated. A premises may only display one sign, even if it has two road frontages.

### Small owner-operated brothels (SOOB)

- 5.18 The PRA defines a SOOB as a place where no more than four sex workers work, and where each sex worker retains control over their own earnings.
- 5.19 There is no requirement under the PRA for registration or licensing of a SOOB, and no legal means for the Council to require such information. This means the Council does not know where SOOBs are operating – unless information comes to light, such as via a complaint.
- 5.20 Due to the earthquakes in Christchurch and damage to the central city (where most brothels were located), sex workers may now be working independently (either alone or in small groups, in a SOOB situation), in higher numbers than was the case pre-quake, when work was available in brothels.
- 5.21 The Council's report of the Hearings Panel on the brothels bylaw (6 December 2012) acknowledged that *...in most cases the general public are unaware of the location of SOOBs as these are small, usually extremely discreet businesses that are mostly located in residential areas*. It is not uncommon for a SOOB to operate on a part-time or casual basis, and most operate by appointment only.
- 5.22 However, there have been some complaints about SOOBs in Christchurch on the basis of late-night comings and goings, and traffic or other noise. These have largely been dealt with as District Plan (home occupation) breaches, as set out below.

### Regulation of SOOBs in the brothels bylaw

- 5.23 The brothels bylaw explicitly excludes SOOBs from the location restrictions relating to other brothels, but prohibits SOOBs from operating out of a 'multi-unit residential complex', which is defined in the bylaw as:
- two or more residential units situated together on an area of land, whether or not the land is in more than one legal title, and irrespective of the legal ownership of the land as a whole, or of the units.
- 5.24 It goes on to give some examples:
- a block of flats, whether multi storey or not, where there are shared walls between the units or garages of the units;
  - a townhouse complex, where the units may be physically separated but there is a shared driveway or paths between the units.
- 5.25 The intent of this restriction is to prevent issues arising from brothel-related activities in apartments, units, flats or townhouses, such as the comings and goings of clients. SOOB activities could impact on other residents through the use of common areas such as foyers, hallways, lifts, paths, parking spaces or driveways. Noise may also be an issue.

### District Plan home occupation requirements and operating a SOOB

- 5.26 The District Plan requirements applicable to operating a SOOB in a residential zone are the 'home occupation requirements'. A SOOB operating in a non-residential zone must comply with the applicable District Plan requirements in that zone, just like any other business.
- 5.27 A home occupation is defined in the District Plan as "any occupation, including a profession, undertaken within a residential unit by a person who lives permanently within that residential unit". Any home occupation is intended to be secondary in scale to the residential use of the site.



- 5.28 Home occupations are permitted in all residential zones, provided certain conditions are met. These largely relate to limits on the floor area used; opening hours (7am-9pm weekdays, and 8am-7pm on weekends and public holidays); and parking restrictions. There are also limits on the number of people than can be engaged in the activity on-site.
- 5.29 While the PRA defines a SOOB as involving “no more than four sex workers”, the District Plan home occupation restrictions are:

Residential Central City zone	Only those who live permanently on-site can be employed in the activity
All other residential zones	Only two full time equivalent persons who live off-site can be employed in the home occupation (plus any who live permanently on-site)

- 5.30 If these conditions cannot be met, a resource consent is required for the home occupation as a restricted discretionary activity under the District Plan. The application must address the scale of the activity, traffic generation and access safety, and hours of operation, depending on which particular standards are not met.

### Signage associated with home occupations and SOOBs

- 5.31 The District Plan restricts any signage associated with a home occupation, generally limiting it to a maximum of 2m<sup>2</sup>. However, the brothels bylaw further restricts signage relating to commercial sexual services, limiting it in the brothels-allowed areas, and prohibiting it in all other areas. Generally SOOBs wish to operate discreetly and have no signage.

### High Court challenge relating to SOOBs

- 5.32 The Council’s Brothels (Location and Signage) Bylaw 2004 was challenged in 2005 in *Willowford Family Trust and T R Brown v Christchurch City Council*. The challenge resulted in the location provisions in the 2004 bylaw being quashed.
- 5.33 The 2004 bylaw prohibited brothels, except in business zones (‘brothels’ included SOOBs). The Judge found that the practical effect of the bylaw was an ‘effective prohibition’ on SOOBs. He found the location provisions unreasonable, as the power enabled regulation, not prohibition.
- 5.34 This case is worth noting in relation to the review, and any proposed changes to the bylaw.
- 5.35 Although the location provisions were quashed, the signage provisions remained in force. The 2004 bylaw was automatically revoked on 7 July 2011 (as per section 160 of the LGA). Between then and March 2013, the Council had no bylaw regulating brothels or signage.

### Brief history of brothel-related bylaws in Christchurch

Date	What happened and why
2003	The Prostitution Reform Act came into force, enabling bylaws to be made relating to brothel locations and associated signage
2004	The Council adopted a brothels bylaw regulating brothel locations and signage
2005	The 2004 brothels bylaw was successfully challenged in the High Court - the location provisions were quashed (due their impact on SOOBs)
~	The signage provisions of the 2004 brothels bylaw remained in force
2009	The Council consulted on revoking the brothels bylaw. Overwhelmingly, submitters disagreed (99% of 345 submitters). The Council directed staff to work on a new bylaw (to be in place before the 2004 bylaw lapsed in 2011)
~	Work did not proceed as planned due to the 2011 earthquakes
2011	The 2004 bylaw was not reviewed in time, so was automatically revoked by section 160 of the LGA
~	Christchurch had no bylaw relating to brothels

Date	What happened and why
2013	The Council adopted the 2013 brothels bylaw, regulating brothel locations (explicitly exempting SOOBs from the location restrictions, but prohibiting SOOBs in multi-unit residential complexes) and regulating associated signage. The need for a new bylaw was reinforced due to concerns about central city brothels relocating post-quake to other parts of the district.
2018	Review of the 2013 brothels bylaw (five year review requirement in the LGA)

### Information on brothels, SOOBs, complaints and bylaw enforcement activities

5.36 There is no legal means for the Council to collect accurate information on the total number of brothels or SOOBs operating in the district. There is no statutory requirement to register businesses of prostitution.

5.37 Although operators of brothels are required to obtain an operator's certificate (and renew it annually), this information is held by the Registrar of Auckland District Court. The PRA does not allow the release of information on brothel operators that identifies individual applicants or certificate holders, but does enable the release of statistical information (section 41).

5.38 Staff sought information from the Registrar of Auckland District Court on holders of brothel operator certificates in the district for the five years the bylaw has been in force:

Year	2013	2014	2015	2016	2017
Applications	6	2	5	4	5

5.39 The number of people who hold brothel operator certificates may not be indicative of the number of brothels, as a certificate-holder may operate more than one brothel. The Police have a role in ensuring compliance with this aspect of the PRA.

5.40 The Council is aware of some existing brothels (for example, those specified in the current brothels bylaw as exempt from the location provisions), and has received several applications in the last five years relating to resource consents for operating a "business of prostitution".

5.41 The Council has not received many complaints in relation to brothel locations or signage relating to commercial sexual services. The majority of complaints have related to the operation of SOOBs, some in multi-unit residential complexes, and more often than not, complaints have related to District Plan 'home occupation' breaches, rather than non-compliance with the bylaw. Breaches have tended to relate to the floor area used for business activities, car-parking and times of operation.

5.42 Inquiries and investigations by Council staff have often resulted in a non-compliant brothel or SOOB ceasing to operate voluntarily.

5.43 The Council has taken one prosecution in relation to a brothel (in 2014) in the five years since the bylaw came into force. This related largely to home occupation District Plan breaches (hours of operation and floor space), but also looked at whether the situation breached the brothels bylaw in relation to whether it was operating as a SOOB or a brothel. If operating as a brothel, it would be in breach of the bylaw location provisions, but if it was acting as a SOOB, it was not. In the end, the defendant was found guilty of District Plan breaches, but not guilty of a bylaw breach.

5.44 The penalties under the Resource Management Act 1991 (for breaches of the District Plan) are potentially for more significant than those available for a bylaw breach.

5.45 The Compliance and Investigation Team has, on occasion, been involved or worked in conjunction with Immigration New Zealand when there have been employment visa issues.

- 5.46 There have been some instances of commercial brothels operating without a resource consent (or applying for a resource consent and undergoing the PRA 'business of prostitution' considerations), and these have been adequately dealt with under the District Plan.

**If there was no brothels bylaw**

- 5.47 If a brothels bylaw was not in place, the only restriction on the location of brothels (including SOOBs) would be through District Plan provisions:
- As a brothel is a business, it is treated like any other business under the District Plan, and if a resource consent is needed, there is an assessment under the PRA in relation to 'existing character', as set out above.
  - Without a bylaw to regulate location, there may be cases where a resource consent is not needed (as all other requirements in the District Plan are met), which means there is no requirement under the PRA to assess its impact, which could result in a brothel locating in an area where it could cause community tensions or offence.
  - A SOOB is treated like any other business in a non-residential zone and is subject to District Plan requirements. If a SOOB is in a residential zone, the District Plan requires the home occupation restrictions to be met.
  - Without a bylaw, there may be little restriction on SOOBs operating out of multi-unit dwellings.
- 5.48 It is clearer to have zones or areas where brothels are allowed, or not allowed, than to rely on District Plan provisions alone. It is useful to have clarity (via a bylaw) as to where SOOBs can operate.
- 5.49 The only restrictions on signage for commercial sexual services, if there was no bylaw, would be District Plan provisions, with any issues relating to content (decency or offensiveness) covered by the Advertising Standards Authority (via a Code of Practice, which is part of the industry's self-regulation).

**Initial stakeholder views**

- 5.50 Staff met with the New Zealand Prostitutes Collective to discuss any issues relating to the coverage and operation of the brothels bylaw. The Collective expressed some concern about the broad coverage of the multi-unit residential complex definition.
- 5.51 The Collective believes the definition is too broad, and makes it difficult in practice for anyone to operate a SOOB from the lower-cost housing options covered by the multi-unit residential complex definition. Where there is separate pedestrian access to a front door servicing a single unit, the Collective believes a SOOB should be able to operate with minimal impact on neighbours.
- 5.52 There was a recent article in *The Press* (13 October 2017) about a SOOB operating from a Merivale townhouse. In the article, the woman operating the SOOB thought the standalone townhouse would not breach the bylaw. Since a complaint to the Council, she had realised that the townhouse was considered a multi-unit residential complex under the bylaw, so had ceased operations. The article also quoted her as saying that none of her neighbours realised she was operating as a SOOB from the property until a message to that effect was anonymously spray-painted on her fence.
- 5.53 The Police have a role in compliance and enforcement activities in relation to the operation of brothels under the PRA. The Police have advised that they are not aware of any issues relating to brothel locations or signage.
- 5.54 Health authorities have a role in relation to health and hygiene aspects of the operation of brothels under the PRA. Community and Public Health and the Medical Officer of Health have

advised that they have no concerns in relation to the bylaw's coverage (location and signage). However, Community Public Health noted that SOOBs can be a safer option for sex workers than working on the street, and did not support changes that would make it more difficult for SOOBs to operate.

### **Section 155 assessment – conclusions on whether a bylaw is the most appropriate way of addressing the perceived problems**

- 5.55 By having a bylaw to regulate brothel location, and to control signage relating to commercial sexual services, it means:
- the location of brothels can be limited (the current bylaw does not allow brothels in residential areas and near schools, limiting their location to specified industrial and business zones, providing further location controls than those in the District Plan);
  - the potential negative impact of SOOBs in some residential settings can be controlled (the current bylaw prohibits SOOBs from multi-unit residential complexes, further restricting the current 'home occupation' restrictions under the District Plan, and potentially reducing tensions that may arise if a SOOB were to operate from an apartment, unit, flat or townhouse); and
  - signage can be controlled (the current bylaw prohibits signage across most of the city, only allowing it where brothels are allowed, and limiting its size, content and placement. This allows specific restrictions relating to brothel signage, rather than relying on the decency or offensiveness provisions of the Advertising Standards Authority Code of Practice, or the District Plan).
- 5.56 Revoking the bylaw would reduce the tools that the Council has to manage the problems identified in this review, and result in a lack of regulatory options to manage the issues. There has historically been strong public support for regulation in this area.
- 5.57 This review concludes that a bylaw to regulate the location of brothels and the display of signage advertising commercial sexual services is still needed. This information is set out in more detail in the attached section 155 analysis.
- 5.58 Some amendments may need to be made to update or further improve the bylaw, and if so, these will be set out in the subsequent report to Council.

### **Legal implications**

- 5.59 Although the Council had a brothels bylaw prior to the 2013 bylaw, this lapsed, so for the purposes of section 158, the current bylaw is considered a 'new' bylaw, subject to the five year review requirement, and not an established bylaw, subject to the ten year review requirement (section 159)
- 5.60 The Legal Services Unit has advised that the risk of not reviewing a bylaw within its statutory review deadline is that any bylaw made in replacement would be considered a new bylaw (and subject to a subsequent five year review, under section 158), rather than being considered an established bylaw (and subject to a subsequent ten year review, under section 159).
- 5.61 The Legal Services Unit has advised that there are no enforcement implications relating to meeting or not meeting the review deadline. Even if the bylaw were not reviewed within the statutory review deadline, the bylaw would still be enforceable for two years after the required review date. After this time, a bylaw not otherwise revoked would be automatically revoked by section 160A of the LGA.
- 5.62 In order to 'review' a bylaw, a council must make a determination under section 155 of the LGA. Section 155(1) requires a determination that a bylaw is the most appropriate way of addressing the perceived problem(s).

- 5.63 Section 155(2) and 155(3) relate to New Zealand Bill of Rights Act 1990 (NZBoRA) implications, and whether the bylaw is in the most appropriate form. These determinations will be appropriately addressed in the July report discussing possible changes and public consultation on the bylaw. Note that section 13 of the Prostitution Reform Act allows bylaws restricting advertising relating to commercial sexual services (CSS) to breach NZBoRA (freedom of expression).
- 5.64 Regardless of whether the brothels bylaw is to be amended, replaced, revoked, or retained as is, this will be covered in a subsequent report, followed by a public consultation process.

## Attachments

No.	Title	Page
A <a href="#">↓</a>	Brothels (Location and Commercial Sexual Services Signage) Bylaw 2013 - review of existing bylaw, section 155 analysis 2018	18

## Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

## Signatories

<b>Authors</b>	Teena Crocker - Senior Policy Analyst Judith Cheyne - Associate General Counsel
<b>Approved By</b>	Helen Beaumont - Head of Strategic Policy Brendan Anstiss - General Manager Strategy and Transformation

Review of the Christchurch City Council  
Brothels (Location and Commercial Sexual Services Signage) Bylaw 2013

Section 155 Report

Introduction

1. Under section 158 and 159 of the Local Government Act 2002 (LGA), the Council is required to review its bylaws at five and then 10 yearly intervals.
2. This is the first review of the Brothels (Location and Commercial Sexual Services Signage) Bylaw 2013 (five years after adoption). In order to meet the statutory requirements for review, the bylaw must be reviewed by 28 March 2018.
3. When the Council reviews a bylaw, section 160 of the Act requires the Council to review the bylaw by making the determinations required by section 155.
4. Section 155 of the LGA must be followed when reviewing a bylaw. Section 155(1) requires a council to determine whether a bylaw is the **most appropriate way of addressing a perceived problem**. This report provides the analysis of whether a bylaw is the most appropriate tool to address those problems.
5. There are two further parts to section 155 (determining that a bylaw is in the most appropriate form, and assessing whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990). These two aspects will be considered when staff bring a further report to the Committee and Council, which will recommend any bylaw changes and consultation on those changes (consultation is still required, even if there are no changes).

Bylaw-making powers and penalties

6. There are two bylaw-making powers contained in the Prostitution Reform Act 2003 (PRA), generally enabling councils to make bylaws to –
  - prohibit or regulate the advertising of commercial sexual services (CSS); and to
  - regulate the location of brothels.
7. The current (2013) bylaw limits the location of brothels to areas broadly based on commercial business districts in district planning documents, restricts CSS advertising in those areas, and prohibits CSS advertising elsewhere. It also prohibits small owner-operated brothels (SOOBs) from operating in multi-unit residential units.
8. Bylaws made under the PRA must follow the same process as if they were made under the LGA
9. The penalties for breaching a bylaw made under the PRA are the same as a bylaw made under section 145 of the LGA. This means the penalty for breaching the bylaw is prosecution, with a fine on conviction of up to \$20,000. Other enforcement tools under the LGA may also be used, where relevant.

Background / current brothels bylaw

*Regulation of the location of brothels*

10. The areas where brothels can operate are set out in maps that form part of the current bylaw. These areas were based on commercial business zones in the relevant planning documents in 2013. This approach was intended to ensure that brothels were not operating in residential areas, and that there were buffer zones around residential properties and schools. An explanatory note in the bylaw clarifies that:
  - where commercial zones adjoined or were close to schools, preschools or residential areas (and were not suitably buffered by a major road), the zones were reduced to provide better separation of brothels from children and residential activity, and
  - other parts of some zones were also removed when the result of the 'buffering' left only small pockets of properties.



11. In summary, the current bylaw prohibits brothels from operating:

- in any area other than those areas set out in the maps in the bylaw's schedule;
- on any land immediately adjacent to an open space area in the Central City; and
- in any building that is located on a property that shares a boundary with a school (including early childhood education centres).

12. The bylaw allows brothels to operate only in the larger commercial business zones (the smaller business zones are not included), the maps of which are titled:

- Central City, Sydenham / Phillipstown, Belfast, Blenheim Road, Bromley, Burnside, Hornby, Hornby South, Ferrymead / Woolston, Riccarton / Addington.

13. There were several brothels that were outside of the areas specified in the bylaw at the time it was developed. These brothels were exempted from the prohibition as they had been operating for some time. The exemption for these two specified brothels is conditional on there being no changes in character, or increases in scale or intensity.

#### *Location of Small Owner-operated Brothels (SOOBs)*

14. The PRA defines a SOOB as a brothel at which no more than four sex workers work, and where each worker retains control over their earnings from prostitution.

15. The location of SOOBs is not regulated in the current bylaw (they are exempt from the location restrictions of other brothels), but SOOBs are prohibited from operating out of multi-unit residential complexes.

16. The intent of this restriction was to prevent issues arising from brothel-related activities in apartments, units, flats or townhouses, such as the comings and goings of clients. SOOB activities could impact on other residents through the use of common areas such as foyers, hallways, lifts, paths, parking spaces or driveways. There may also be noise issues.

17. SOOBs may also be considered a 'home occupation' activity under the District Plan, as covered later in this analysis.

#### **Regulation and prohibition of signage advertising commercial sexual services (CSS)**

18. The bylaw-making power enabling the regulation and prohibition of signage advertising CSSs allows bylaws to prevent the public display of signage—

- that is likely to cause a nuisance or serious offence to ordinary members of the public; or
- that is incompatible with the existing character or use of that area.

19. A bylaw may restrict the content, form, or amount of signage on display. In the current bylaw, signage advertising CSS is prohibited in locations where brothels are prohibited. In areas where brothels are allowed, there are restrictions on signage.

20. The signage requirements in the current bylaw are as follows:

- a sign must be attached to the building in which the CSS are provided, and the building number must be displayed;
- the sign must not be offensive, display a pictorial image, exceed 0.3m<sup>2</sup>, and or be illuminated by a flashing light;
- there can only be one sign on any premise (even if it has a dual-frontage); and
- even if signage is allowed, it must not be visible from any point on any school boundary.

21. Other signage restrictions are regulated by the District Plan, and content is limited by the Advertising Standards Authority (decency and offensiveness).

#### **Other regulation and controls on businesses of prostitution**

##### *Brothels*

22. A brothel must comply with District Plan requirements, just like any other business. In some zones, this may mean a resource consent is required. Alternatively, if the brothel complies with the

requirements of the area in which it is located (as a permitted activity) then it will not need a resource consent.

23. If a resource consent is needed, the PRA requires special consideration as to whether relating to a 'business of prostitution' (relating to causing serious offence, or incompatibility with existing character or use).

#### SOOBs

24. A SOOB may fall under the District Plan definition of 'home occupation' if it is operating in a residential zone. The District Plan defines home occupation as: 'any occupation, including a profession, undertaken within a residential unit by a person who lives permanently within that residential unit' (and includes restrictions on the area to be used for that business, on the number of employees, the hours of operation, and parking).
25. If these conditions cannot be met, a resource consent is required for the home occupation as a restricted discretionary activity. Alternatively, if a SOOB is operating in an area other than a residential area, the normal District Plan requirements apply, as with any other business.

#### Perceived and actual problems

26. Section 155 of the LGA requires an assessment of 'perceived' problem(s).

#### *Public perceptions of businesses of prostitution*

27. Often there is a mismatch between public perceptions of the sex industry, and the realities. One example is the introduction of the Prostitution Reform Act. There was an assumption that decriminalisation would cause a proliferation of prostitution activities. This concern was significant enough that the Act contained provisions for a committee to report to Parliament on the impacts of the legislation five years after it was enacted. However, the Prostitution Law Review Committee established that concerns about proliferation were unfounded, concluding that "...the PRA has had little impact on the numbers of people working in the sex industry". (p.41, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Ministry of Justice, May 2008).
28. The Council first developed a bylaw to regulate brothels and signage in 2004. As a result of a High Court challenge in 2005, the location provisions were quashed, leaving only the signage provisions. In 2009, the Council undertook public consultation on revoking the bylaw, as advice indicated it was not needed because other regulatory tools were available to control signage (District Plan and Advertising Standards), and there had been no enforcement action on signage over that time. As the location provisions had been quashed in 2005, there had been no bylaw regulating brothel locations, and over the four years, there had been very few, if any, issues or complaints.
29. The public perception of revoking the 2004 brothels bylaw in the 2009 consultation was very strong. Of 345 submissions, 99% disagreed with revocation. The overwhelming majority of submitters considered that there should be a bylaw prohibiting or regulating signage advertising CSS, and, although it was not the subject of the consultation, many submitters also argued that the location of brothels should also be regulated.
30. After the 2009 consultation, staff were directed to prepare a new bylaw for consultation before the 2004 bylaw expired in July 2011. However, this work was overtaken by the 2010 and 2011 earthquakes, resuming in early 2012.
31. In the lead up to the development of the current bylaw in 2012, the location of brothels was identified as a potential new problem because many of the known operator-run brothels had been located in the Central City and were inaccessible or badly damaged following the 2011 earthquakes. There was a concern that these businesses might temporarily or permanently relocate to other parts of the city, and so some controls were proposed to limit where this could occur.
32. The Council undertook further public consultation in mid-2012, and, of 197 submissions, the majority agreed with the regulation of signage, as set out in the proposed bylaw. The consultation also proposed restricting where brothels could be located. Many submitters requested changes to the areas where brothels could or could not be located, focusing on not wanting to 'see' brothel-related activities in or from residential areas. This led to the development of the 'buffer' approach that is in



the current bylaw – allowing space between both residential properties and schools, as to the location of brothels, and limiting them to the larger commercial business zones.

*Current data and evidence of issues*

33. There is no legal means for the Council to collect accurate information on the total number of brothels or SOOBs operating in the district, as there is no statutory requirement to register businesses of prostitution.
34. Although operators of brothels are required to obtain an operator's certificate (and renew it annually) under the PRA, this information is held by the Registrar of Auckland District Court. The PRA does not allow the release of information on brothel operators that identifies individual applicants or certificate holders, but does enable the release of statistical information (section 41).
35. Information held by the Registrar of Auckland District Court on applications for brother operator certificates in the Christchurch district shows the following;

Year	2013	2014	2015	2016	2017
Applications	6	2	5	4	5

36. The number of people who hold brothel operator certificates may not be indicative of the number of brothels, as a certificate-holder may operate more than one brothel. The Police have a role in ensuring compliance with this aspect of the PRA.
37. There have been several applications for resource consents relating to 'businesses of prostitution' which have required an assessment under section 15 of the PRA. Section 15 of the PRA requires an assessment of whether the business:
- 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
  - is incompatible with the existing character or use of the area in which the land is situated.
38. As mentioned previously, if a business of prostitution complies with all other requirements in the District Plan, a resource consent may not be needed, so it is only when a resource consent is required that this assessment must occur.
39. There have been very few complaints about the location of brothels in the five years the bylaw has been in force, though there have been some complaints relating to SOOBs.
40. Most SOOB complaints have been able to be addressed through the District Plan 'home occupation' restrictions, rather than through the bylaw. The penalties under the Resource Management Act 1991 (for breaches of the District Plan) have different enforcement tools and the potential for more significant penalties than those under a bylaw made under the LGA.
41. If the activity breaches the District Plan rules, it must cease to operate, or the operator can apply for a resource consent as a restricted discretionary activity.
42. The Council has taken one prosecution under the bylaw, but did not succeed. However, in that case, the charges relating to breaching the City Plan did hold up, resulting in a conviction.
43. Some complaints have related to immigration matters and have been dealt with by New Zealand Immigration (Ministry of Building, Innovation and Employment / MBIE).
44. Anecdotally, the reduction in operator-run brothels in the central city post-quake (and lack of opportunities for sex work in established brothels) may have led to an increase in SOOBs, with sex workers choosing to operate in a SOOB setting, independently or in small groups. However, there has not been a marked increase in SOOB-related complaints, so whether or not there has been an increase in SOOBs is difficult to determine.

**Conclusions as to whether a bylaw is the most appropriate way of addressing the issues**

45. There are both real and perceived problems associated with the location of brothels (including SOOBs), and signage relating to CSS. There are clear bylaw-making powers to regulate these matters.

46. There is sufficient evidence of a perceived problem. During consultation on revoking the 2004 brothels bylaw, there was overwhelming public support for regulation (99% of 345 submitters objected to revoking the bylaw). When the current bylaw was consulted on in 2012, most of the 197 submitters agreed that the location of brothels should be regulated (though where they should be allowed / prohibited was contentious). The majority also supported regulating CSS signage.
47. The District Plan provides restrictions on business activities, and treats brothels and SOOBs like any other business. This is appropriate, as brothels are a legal activity - however, there are perceptions across the community that may justify additional controls. This is recognised to some degree through the PRA, which requires additional assessments where a resource consent is needed for a business of prostitution (relating to nuisance or serious offence, and existing character of an area). However, this assessment does not apply if the brothel activity complies with all other planning requirements and does not need a resource consent.
48. By having a bylaw to regulate brothel location, and to control signage relating to CSS, it means:
- the location of brothels can be limited (the current bylaw does not allow brothels in residential areas and near schools, limiting their location to specified industrial and business zones, providing further location controls than those in the District Plan);
  - the potential negative impact of SOOBs in some residential settings can be controlled (the current bylaw prohibits SOOBs from multi-unit residential complexes, further restricting the current 'home occupation' restrictions in the District Plan, and potentially reducing tensions that may arise if a SOOB were to operate from an apartment, unit, flat or townhouse); and
  - signage can be controlled (the current bylaw prohibits signage across most of the city, only allowing it where brothels are allowed, and limiting its size, content and placement. This allows specific restrictions relating to brothel signage, rather than relying on the decency or offensiveness provisions of the Advertising Standards Authority Code of Practice, or the District Plan).
49. Revoking the bylaw would reduce the tools that the Council has to manage the problems identified in this review, and result in a lack of regulatory options to manage the issues.
50. This review concludes that a bylaw to regulate the location of brothels and the display of signage advertising CSS is still needed.
51. Some amendments may need to be made to update or further improve the bylaw, and if so, these will be set out in a subsequent report to Council, along with the remainder of the section 155 determinations (New Zealand Bill of Rights Act 1990 implications, and whether the bylaw is the most appropriate form of bylaw).

Clause-by-clause analysis of the Brothels (Location and Commercial Sexual Services Signage) Bylaw 2013

Existing bylaw coverage	Issues and analysis
<p><b>Interpretation (definitions)</b></p> <p>Most of the definitions in the bylaw are the same as in other legislation, and do not need to change.</p>	<p>Where appropriate, it can be helpful for bylaws to use wording already established in legislation or in case law.</p> <p>The 2013 bylaw appropriately 'borrows' definitions from the Prostitution Reform Act 2003 (PRA), such as for 'brothel', 'commercial sexual services', and 'small owner operated brothel' (SOOB).</p> <p>One exception is the definition of '<b>multi-unit residential complex</b>', which needed to be defined in the bylaw due to a restriction on the operation of brothels (including SOOBs) in apartments, flats, units, and town-house complexes. Whether this definition is appropriate in scope is explored below.</p>
<p><b>Object of the bylaw (purpose)</b></p> <p>The 2013 bylaw is intended to:</p> <ul style="list-style-type: none"> <li>• Restrict the location of brothels (other than SOOBs)</li> <li>• Restrict all brothels (including SOOBs) from operating in multi-unit residential complexes</li> <li>• Allow existing brothels to continue to operate</li> <li>• Control signage advertising commercial sexual services (CSS) by prohibiting in some areas and restricting in other areas.</li> </ul>	<p>This purpose is still relevant. The bylaw-making power in the PRA enables councils to regulate the location of brothels, and to regulate or prohibit the advertising of CSS.</p> <p>The <u>location of brothels</u> was identified as a problem that required regulation during the development of the bylaw in 2013 – as many of the known operator-run brothels were located in the Central City and were inaccessible or badly damaged following the 2011 earthquakes. There was a concern that these businesses may relocate to other parts of the city. This is still applicable as the rebuild progresses and the city develops, and as normal business activity resumes. It is reasonable that there are limitations on the location of brothels, and this was strongly supported by the community when last consulted on.</p> <p>The display of <u>signage</u> advertising CSS is regulated in the bylaw. There is some coverage of signage in both the District Plan and in the Advertising Standards Authority (ASA) <i>Code of Practice</i> (which covers offensiveness and decency). The ASA adjudicates where there is an alleged breach of the Code. The District Plan provisions do not cover offensiveness or decency.</p> <p>It is reasonable that the bylaw places restrictions on the size, position, and content of signage relating to CSS to prevent the rise of issues. This may be more an issue of perception than evidence, as many businesses in the sex industry intentionally operate discretely and have very minimal signage.</p>

Existing bylaw coverage	Issues and analysis
<p><b>Location of brothels</b></p> <p>The bylaw prohibits brothels from operating:</p> <ul style="list-style-type: none"> <li>• in any area other than those areas set out in the maps in the bylaw's schedule;</li> <li>• on any land immediately adjacent to an open space area in the Central City; and</li> <li>• in any building that is located on a property that shares a boundary with a school (including early childhood education centres)</li> </ul>	<p>The bylaw-making power allows councils to regulate, but not prohibit, the location of brothels.</p> <p>A brothel is subject to the same requirements as any other business under the District Plan (other than, where a resource consent is required, some assessment under section 15 of the PRA, as mentioned previously).</p> <p>The 2013 bylaw allows brothels to operate only in the larger commercial business zones (the smaller business zones are not included). The areas are set out in maps, which are covered later in this table. An explanatory note in the bylaw clarifies that:</p> <ul style="list-style-type: none"> <li>• where commercial zones adjoined or were close to schools, preschools or residential areas (and were not suitably buffered by a major road), the zones were reduced to provide better separation of brothels from children and residential activity, and</li> <li>• other parts of some zones were also removed when the result of the 'buffering' left only small pockets of properties.</li> </ul> <p>The 2013 bylaw areas were based on the then current draft Central City Plan and Christchurch City Plan, and Proposed Banks Peninsula District Plan. These have now been replaced by the Christchurch District Plan. There have been changes in the zones on which the 2013 bylaw was based, but the areas are still industrial or business zones (not residential zones).</p> <p>There was significant community investment in negotiating the areas in the current bylaw. As there have been very few complaints about the location of brothels, or inquiries about establishing brothels outside of the allowable areas, these areas may not need to change.</p>
<p><b>Location of brothels (SOOBs)</b></p> <p>This clause restricts brothels (including SOOBs) from operating in apartments, flats, units, and town-house complexes</p>	<p>The intent of this restriction is to prevent issues arising from brothel-related activities in apartments, units, flats or townhouses, such as the comings and goings of clients. SOOB activities could impact on other residents through the use of common areas such as foyers, hallways, lifts, paths, parking spaces or driveways. Noise may also be an issue.</p> <p>The District Plan already restricts 'home occupations' in residential areas. These restrictions relate to floor area, operating hours, and parking. There are also limits on the number of people than can be engaged in the activity on-site. Often complaints about SOOBs are addressed through the District Plan home occupation restrictions.</p> <p>The New Zealand Prostitutes Collective (NZPC) has raised concerns about the impact of current clause, because the definition of multi-unit residential complex is very broad. It includes situations where there are shared walls (even if these are garage walls), and where townhouses are physically separated, but there are shared paths or there is a shared driveway. NZPC has indicated that the definition makes it difficult in practice for anyone to operate a SOOB from the lower-cost housing options covered by the multi-unit residential complex definition. Where there is separate pedestrian access to a front door servicing a single unit, NZPC believes a SOOB should be able to operate with minimal impact on neighbours.</p> <p>This issue may need further exploration.</p>

Existing bylaw coverage	Issues and analysis
<p><b>Existing brothels</b></p> <p>This clause enables two specified brothels to continue to operate, despite being located outside of the bylaw's location provisions</p>	<p>The two locations specified in the bylaw are:</p> <ul style="list-style-type: none"> <li>• 464 Worcester Street, Linwood</li> <li>• 183 Bealey Avenue.</li> </ul> <p>The exemption only applies if there are no changes in character or increases in scale or intensity. As far as we are aware these properties are still operating as brothels.</p> <p>These locations would need an ongoing exemption to continue to operate outside of the location provisions, or there would need to be changes to the location provisions. Alternately, if not specified as exempt, they could apply for a dispensation under the General Bylaw.</p>
<p><b>Prohibition on signage advertising CSS</b></p> <p>This clause aligns with the brothel location provisions, prohibiting signage in areas outside of the brothel location areas</p>	<p>There have been very few (if any) complaints about CSS signage being installed in areas outside of the allowable area, noting that signage needs to comply with the District Plan, and Advertising Standards Authority requirements (in terms of decency and offensiveness).</p> <p>Despite this, from previous consultation undertaken by the Council, there is an overwhelming public perception that there needs to be controls in place to restrict advertising relating to CSS.</p>
<p><b>Regulation of signage advertising CSS</b></p> <p>This clause aligns with the brothel location provisions, restricting advertising relating to brothels within the areas where brothels are allowed</p>	<p>The advertising industry self-regulation model involves a Code of Practice administered by the Advertising Standards Authority (ASA). This covers a range of matters, including decency and offensiveness. The ASA adjudicates in cases where there has been an alleged breach of the Code, and makes rulings, but has no enforcement powers.</p> <p>There have been very few (if any) complaints about CSS signage being installed in relation to brothels in the brothel-allowed area, noting that signage needs to comply with the District Plan, and should comply with the Advertising Standards Authority (in terms of decency and offensiveness).</p> <p>Previous Council reports on this topic have noted that many businesses in the sex industry operate discretely and have very minimal or no signage.</p> <p>Despite this, from previous consultation undertaken by the Council, there is an overwhelming public perception that there needs to be controls in place to restrict advertising relating to CSS.</p>

Existing bylaw coverage	Issues and analysis
<b>Transitional provisions</b> These: <ul style="list-style-type: none"> <li>allowed two brothels to continue to operate (as covered above), and</li> <li>allowed SOOBs to operate in multi-unit residential complexes for approximately 12 months</li> </ul>	<p>These are parts of a bylaw that assist in enabling business operators time to comply with new requirements or to relocate.</p> <p>The exemption for two specified brothels from the location provisions has been covered above.</p> <p>The prohibition on SOOBs operating from multi-unit residential complexes was a new provisions added to the 2013 bylaw as a result of issues raised during the submissions process. As it was a new issue, a 12 month transitional provision (until 31 March 2014) was added to the bylaw, enabling otherwise-complying SOOBs to continue to operate and to find a new place from which to operate. The SOOB provision is no longer relevant.</p>
<b>Offence and penalty</b> This clause in the 2013 refers back to the LGA bylaw enforcement and penalty clauses	<p>This is a reflection on how the PRA is written. Bylaws made under the PRA must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002, and this also relates to enforcement powers. This means the penalty for a breach of the bylaw is a fine on conviction of up to \$20,000. This provision is still relevant.</p>
<b>Location / maps</b> The bylaw allows brothels to operate in areas covered by maps, titled: <ul style="list-style-type: none"> <li>Central City, Sydenham / Phillipstown, Belfast, Blenheim Road, Bromley, Burnside, Hornby, Hornby South, Ferrymead / Woolston, Riccarton / Addington</li> </ul>	<p>The areas in which brothels are allowed were contentious when the 2013 bylaw was developed, and generated a lot of submissions. Changes were made between what was consulted on in 2012 and what the Council adopted in 2013.</p> <p>The areas on which the maps were based have changed due to the new Christchurch District Plan (having been based on the relevant documents at the time the bylaw was made in 2012 / 2013). However, the zone changes have not resulted in the areas becoming residential zones.</p> <p>There have been very few complaints about the location of brothels, or inquiries about establishing brothels outside of the allowable areas, so these areas may not need to change.</p>



## 8. Review of the Public Places Bylaw 2008

Reference: 18/20429

Contact: Libby Elvidge Libby.Elvidge@ccc.govt.nz

941 8999

### 1. Purpose and Origin of Report

#### Purpose of Report

- 1.1 The purpose of this report is for the Regulatory Performance Committee to report to Council about the first stage of the review of the Public Places Bylaw 2008 (attached), and to recommend that determinations be made by the Council in accordance with statutory requirements.

#### Origin of Report

- 1.2 The Local Government Act 2002 (LGA) requires bylaws to be reviewed within certain timeframes. This report is to facilitate compliance with statutory bylaw review requirements.

### 2. Significance

- 2.1 The decisions in this report are of low significance in relation to the Christchurch City Council's Significance and Engagement Policy.
  - The level of significance was determined by the limited impact of the decisions in this report. The decisions are required to meet statutory bylaw review requirements.
  - A subsequent report will provide a draft replacement bylaw, and discuss proposed changes and public consultation on the bylaw.

### 3. Staff Recommendations

That the Regulatory Performance Committee recommends that the Council:

1. Note that the Local Government Act 2002 requires bylaws to be reviewed within certain timeframes, and that the Public Places Bylaw 2008 must be reviewed by 19 June 2018.
2. Note that in order to undertake a review of the bylaw, the Local Government Act 2002 requires a council to make a determination under section 155.
3. Note that a subsequent report discussing proposed changes to the bylaw, and public consultation on the bylaw, will be presented to the Regulatory Performance Committee and Council in July 2018.
4. Resolves that a bylaw is the most appropriate way of addressing the perceived problems relating to public places, in accordance with section 155(1) of the Local Government Act 2002, and identified in this report, and that a bylaw is required to provide for reasonable controls to:
  - a. Protect health and safety;
  - b. Protect the public from nuisance; and
  - c. Provide for the regulation of trading in public places.
5. Agrees that a draft bylaw be prepared for consideration by the Council.
6. Agrees that the draft bylaw will cover the regulation of:
  - a. Commercial activities in public places;
  - b. Obstructions in public places; and

- c. Other issues that may arise during further analysis, including street numbering requirements and signage permission.

## 4. Key Points

- 4.1 This report supports the [Council's Long Term Plan \(2015 - 2025\)](#):
- Activity: Strategic Planning and Policy
    - Level of Service: 17.0.19 Bylaws and regulatory policies are reviewed to meet statutory timeframes and changing needs
- 4.2 The LGA requires bylaws to be reviewed within certain timeframes. This bylaw must be reviewed no later than 10 years after it was last reviewed. In order to meet the statutory requirements for review, the bylaw must be reviewed by 19 June 2018. In order to undertake the review, section 155 of the LGA requires a council to determine that a bylaw is the most appropriate way of addressing the perceived problem(s).
- 4.3 This report only concerns the review. A subsequent report will recommend any bylaw changes and consultation on those changes. Given the priority of the Long Term Plan consultation process in the first half of 2018, consultation on this bylaw will occur later in the year.
- 4.4 The problems that existed in 2008 are still present, and a bylaw is needed to continue to provide these controls:
- requires anyone wanting to undertake a commercial activity or to create an obstruction in a public place to get permission from the Council
  - enables the Council to declare Special Use Areas to prohibit or allow activities in specific areas
  - prevents barbed, razor or electrified wire from being used in fencing in a way that could endanger public safety.
- 4.5 New issues and problems that have been identified include a requirement for the display of street numbering, and permission for signage in public places.
- 4.6 A perceived issue with the 2008 bylaw, is that the bylaw provides no regulation of nuisance behaviours occurring in public places. Staff have previously provided advice to Councillors about the limitations of bylaws (such as, no instant fines) to address behavioural issues (in relation to street-based sex work and loitering).
- 4.7 There are more effective tools available for addressing some anti-social issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act 1981, which the Police enforce. The Council has formed collaborative community work groups to address street-based sex work and street begging, and the associated antisocial behaviour. These working groups will report to the Council separately to the bylaw review.

## 5. Context/Background

### Legal implications and statutory review requirements

- 5.1 The LGA requires bylaws to be reviewed within certain timeframes. In order to meet the statutory requirements for review, the Council must determine that the bylaw has been reviewed by 19 June 2018.
- 5.2 In order to 'review' a bylaw, a council must make a determination under section 155 of the LGA. Section 155(1) requires a determination that a bylaw is the most appropriate way of addressing the perceived problem(s). Section 155(2) and 155(3) relate to New Zealand Bill of Rights Act 1990 (NZBoRA) implications, and whether the bylaw is in the most appropriate form. These



determinations will be appropriately addressed in the July report discussing possible changes and public consultation on the bylaw.

- 5.3 The Legal Services Unit has advised that the risk of not reviewing a bylaw within its statutory review deadline is that any bylaw made in replacement would be considered a new bylaw (and subject to a subsequent five year review, under s158), rather than being considered an established bylaw (and subject to a subsequent ten year review, under s159). The current bylaw is an established bylaw and subject to the 10 year review.
- 5.4 The Legal Services Unit has advised that there are no enforcement implications relating to meeting or not meeting the review deadline. Even if the bylaw was not reviewed within the statutory review deadline, the bylaw would still be enforceable for two years after the required review date. After this time, a bylaw not otherwise revoked would be automatically revoked by section 160A of the LGA.
- 5.5 Proposed changes to the bylaw will be covered in a subsequent report, followed by a consultation process.

### **Bylaw-making powers and enforcement options**

- 5.6 The bylaw is made under section 145 and 146 of the LGA which empowers councils to make bylaws to:
- Protect the public from nuisance, promote and maintain public health and safety, and minimise the potential for offensive behaviour in public places
  - Regulate a number of activities, including trading in public places
  - Manage, regulate against or protect from damage, misuse or loss, certain structures, infrastructure and land under the control of the territorial authority.
- 5.7 The penalty for breaching the bylaw is prosecution and a fine on conviction of up to \$20,000.
- 5.8 There is no infringement (instant fines) regime available at this time for breaching a bylaw made under the LGA. However, there is a range of other enforcement options and tools available under the LGA (for example, seizing offending equipment, or recovering costs from damage).
- 5.9 Additionally, enforcement officers have tools under other legislation, such as the Litter Act 1979, the Resource Management Act 1991, and other Council bylaws.
- 5.10 The bylaw only relates to public places that are owned or managed by the Council (not private property), and does not have any impact on maintenance or repairs to Council property. In general, it is accepted that Council control of public places through a bylaw should not:
- Apply to matters that are covered adequately by other legislation
  - Deal with matters that unnecessarily restrict individual freedoms
  - Cover matters that are insignificant in effect or magnitude
  - Deal with matters that can be more appropriately dealt with by other tools at the Council's disposal
  - Be impractical to enforce.

### **Public Places Bylaw 2008**

- 5.11 The bylaw's purpose is to balance the different needs and preferences of our community in relation to public places, in order to balance private use with public use. The bylaw:
- requires anyone wanting to undertake a commercial activity or to create an obstruction in a public place to get permission from the Council

- enables the Council to declare Special Use Areas to prohibit or allow activities in specific areas, and
  - prevents barbed, razor or electrified wire from being used in fencing in a way that could endanger public safety.
- 5.12 Commercial activities in public places, where appropriate and managed, can add character, vibrancy and safety to urban areas, and can attract visitors to these locations. Examples of commercial activities include market stalls, events, mobile traders, busking and street collections.
- 5.13 However, trading and events need to be balanced against the needs of the environment and the impact public and commercial activities may have on private properties adjacent to public areas, as well as to general public access to, and use of, the public areas. Commercial activity is regulated so the Council is aware of who is carrying out commercial activities on Council land and to manage any appropriate conditions for specific activities.
- 5.14 Some activities are allowed in public places without a written permit from the Council, provided they are carried out in accordance with the Trading and Events in Public Places Policy 2010. Other activities are only allowed in a public place with a written permit from the Council.
- 5.15 Public places provide many opportunities for the community to use and enjoy the space, however, due to the nature of public land being open to all, the competing interests can create obstructions and/or be a nuisance. Examples of obstructions are sandwich board signs on footpaths and encroachment. Encroachment is a good example of how obstructions can impede others' use of public places, for example overgrown vegetation, vehicles unloading goods onto the footpath, and building site fences blocking access to footpaths. The Policy on Structures on Roads 2010 is another policy which supports the Bylaw in this area.
- 5.16 Obstructions in public places need to be managed to ensure access is unimpeded, particularly for pedestrians with impaired mobility. Regulation assists in managing the hazards created by obstructions.
- 5.17 The issues in public places are complex due to the interaction with other requirements for roads and parks. The general public are often unaware of the distinction and what permissions the Council requires for use of the land (e.g. road reserves, Cathedral Square).

#### **Relationship with Council policies and other bylaws**

- 5.18 When the 2008 bylaw was drafted, much of the prescriptive detail was removed from the bylaw, and this information was put in operational policies. This allows a greater degree of flexibility, as operational policies can be altered or updated without the need to undertake the full Special Consultative Procedure to amend the bylaw. This means that they are more flexible and can be altered as situations and needs change (In 2014 amendments were made to the LGA which mean a special consultative procedure is not required to be used for less significant bylaw amendments.)
- 5.19 The policies cover a range of issues in public places, including footpath extensions for café seating, signboards in public places, structures on roads, and trading activities. Many of these operational policies are due for review over the next two to three years. The review of the Trading and Events in Public Places Policy 2010 will be presented to the Regulatory Performance Committee (and then Council) at the same time as the bylaw.
- 5.20 The bylaw has some overlaps with the Traffic and Parking Bylaw 2017 and the Parks and Reserves Bylaw 2014. The Public Places Bylaw 2008 is very broad, whereas there is more specific detail related to roads and parks in those respective bylaws.

### Other issues in public places that may be explored for a proposed new bylaw

- 5.21 The review of the bylaw has raised several issues that occur in public places which are not regulated by the current bylaw. The analysis attached to this report identifies the following specific problems and issues that staff recommend should be covered by the bylaw:
- *Street numbering*: Requiring the owner/occupier of any building to display the building number in a position visible from the road. This would ensure greater visibility of street numbering on buildings (particularly business addresses) to assist the public, and also for emergency services to locate buildings.
  - *Signage*: Advertising and signage in public places are a means of providing information to the public. This includes businesses using signage outside their premises so they are more easily locatable. However, there is also a need to ensure that signage does not impede pedestrian or vehicular access, and to manage the proliferation of signage in some areas. When the current bylaw was drafted, it amalgamated versions of the Christchurch City Council and Banks Peninsula District Council public place-related bylaws. At the time, it was decided that some clauses related to signage in the Banks Peninsula District Council bylaw would remain in force. However, the remaining parts of the Banks Peninsula District Council bylaw were not reviewed by December 2009 (as was required by the LGA), so those parts have now lapsed and have no legal force.

### Antisocial and nuisance behaviour in public places

- 5.22 A perceived issue with the 2008 bylaw, is that the bylaw provides no regulation of some nuisance behaviours occurring in public places – such as begging, loitering or street-based sex work. Staff have previously provided advice to Councillors about the limitations of bylaws to address behavioural issues.
- 5.23 The law requires that any bylaw must be *intra vires* (within the statutory powers that authorise the making of bylaws), certain and reasonable. There is a considerable body of case law on ‘reasonableness’ in the bylaw context. The Courts have noted that in ascertaining the reasonableness of a bylaw, they will look to the surrounding facts, including the nature and condition of the locality in which it is to take effect, the problem it seeks to solve or proposes to remedy, and whether public or private rights are unnecessarily or unjustly affected.
- 5.24 Section 155 of the LGA requires that a bylaw is shown to be the ‘most appropriate way of addressing the perceived problems’, and part of this consideration is how any bylaw would be enforced, and whether this would be effective or not.
- 5.25 There is no dispute that these types of nuisance or antisocial behaviours are problematic; however, the tools available to the Council are limited. The LGA does not provide for an infringement (instant fine) regime for bylaws made under section 145 of the LGA. Other bylaws have legislation that enables instant fines, such as the Dog Control Bylaw 2016 and the Alcohol Restrictions in Public Places Bylaw 2009, as they are made under different legislative powers
- 5.26 For some anti-social issues, there are more effective tools available for addressing behavioural issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act 1981, which the Police enforce. The Summary Offences Act covers: offences against public order; offences against persons or property (such as graffiti); intimidation, obstruction and hindering police; indecency; loitering and trespass; and offences relating to nuisances.

#### *Street-based sex work*

- 5.27 There is a history of tension between street-based sex workers and residents on and surrounding the northern section of Manchester Street (and now also some issues on Manchester Street, south of Bealey Ave). The impacts are causing stress to the residents

(particularly late night noise, offensive and hazardous litter, intimidation, vandalism and trespassing). Some residents sought a regulatory response from the Council.

- 5.28 On 2 November 2017, the Council agreed not to develop a bylaw to regulate the location of street-based sex workers. This was largely because the only means to create a bylaw is under section 145 of the Local Government Act, and this does not enable instant fines, give the Police any special enforcement powers, or allow arrests, meaning any bylaw would have been very difficult to enforce.
- 5.29 Instead, the Council has formed a collaborative community partnership to explore non-regulatory ways of reducing the issues. The group will meet regularly and report to the Regulatory Performance Committee on a quarterly basis.

#### *Begging*

- 5.30 Street begging is another complex issue that happens in public places. While begging appears to be a relatively low level problem, it can create a significant issue for those affected, including the beggars themselves who often suffer from addiction, mental health problems, and can be unwilling to accept assistance. Existing legislation is sufficient to deal with most begging incidences that cause nuisance to the public, including removal of items that are causing an obstruction to the public place. Aggressive begging or harassing passers-by can be dealt with through other legislation, such as the Summary Offences Act. Beggars typically get charged with disorderly behaviour, threatening behaviour or in more serious cases demanding with menaces.
- 5.31 A number of organisations such as the City Mission and Salvation Army extend their community outreach work to beggars, including offering places to shower and eat, and providing information on resources that may be able to assist them. While not all beggars are homeless, the recently adopted Housing First initiative aims to put 100 of the city's long-term homeless people into homes and provide them with additional services and support to increase the chances of them staying off the streets.
- 5.32 On 15 February 2018, the Safer Christchurch Governance Group held a forum to discuss street begging – the issues, challenges, and possible ways forward. It was agreed that the Council could support the development of multi-stakeholder working group over a six month period to consider actions and generate a partnership to assist the street begging community under the Safer Christchurch umbrella. Staff will report to the Social and Community Development Committee on this working party.

#### **Review of the current bylaw**

- 5.33 The bylaw enables the management of public places in order to balance the various different, and sometimes competing, lawful uses for which public places may be used. It seeks to provide for reasonable controls to protect health and safety, to protect the public from nuisance and to provide for the regulation of trading in public places.
- 5.34 The review concludes that a bylaw is still needed to provide these controls and a proposed replacement bylaw should be drafted – the proposed Public Places Bylaw 2018. In drafting a replacement bylaw, staff will look at known and emerging issues where regulation may be needed and assess whether a bylaw is appropriate, and will be effective.
- 5.35 Revoking the bylaw would reduce the tools that the Council has to manage the problems identified in the review, and result in a lack of regulatory options to manage the issues. Keeping the existing bylaw is not a reasonably practicable option either, as improvements and alignments with current practice, as well as new issues, have been identified through the review, and it would be inadvisable to maintain the status quo when known improvements have been identified.
- 5.36 Information and evidence for the clause-by-clause (section 155 analysis) was sought from staff across the Council with operational involvement in parks management, events, urban

regeneration, planning and consenting, leasing, data management, traffic operations and asset management, as well as the Christchurch Transport Operations Centre (CTOC). Staff will present to the Community Boards on the issues and proposed changes during the preparation of a draft replacement bylaw.

## Attachments

No.	Title	Page
A <a href="#">↓</a>	Section 155 Report Christchurch City Council Public Places Bylaw 2008	34

## Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

## Signatories

<b>Authors</b>	Libby Elvidge - Policy Analyst Ruth Littlewood - Senior Policy Analyst Judith Cheyne - Associate General Counsel
<b>Approved By</b>	Helen Beaumont - Head of Strategic Policy Brendan Anstiss - General Manager Strategy and Transformation

## Review of the Christchurch City Council Public Places Bylaw 2008

### Section 155 Report

#### Introduction

1. Under the Local Government Act 2002 (LGA), the Council is required to review its bylaws at five (section 158) and then 10 yearly intervals (section 159). The Council is undertaking this review as part of a series of rolling bylaw reviews. In order to meet the statutory requirements for review, the bylaw must be reviewed by 19 June 2018.
2. When the Council reviews a bylaw, section 160 of the LGA requires the Council to review the bylaw by making the determinations required by section 155.
3. Section 155 of the LGA must be followed when reviewing a bylaw. Section 155(1) requires a council to determine whether a bylaw is the ***most appropriate way of addressing a perceived problem***. This report provides the analysis of whether a bylaw is the most appropriate tool to address those problems.
4. There are two further parts to section 155 (determining that a bylaw is in the most appropriate form, and assessing whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990). These two aspects will be considered when staff bring a further report to the Committee and Council, which will recommend any bylaw changes and consultation on those changes (consultation is still required, even if there are no changes).

#### Bylaw-making powers

5. The bylaw is made under section 145 and 146 of the LGA which empowers councils to make bylaws to:
  - Protect the public from nuisance, promote and maintain public health and safety, and minimise the potential for offensive behaviour in public places;
  - Regulate a number of activities, including trading in public places; and
  - Manage, regulate against or protect from damage, misuse or loss, certain structures, infrastructure and land under the control of the territorial authority.
6. The penalty for breaching the bylaw is prosecution, and a fine on conviction of up to \$20,000.
7. There is no infringement (instant fines) regime available at this time for breaching a bylaw made under the LGA. However, there is a range of other enforcement options and tools available under the LGA (for example, seizing offending equipment, or recovering costs from damage).
8. Additionally, enforcement officers have tools under other legislation, such as the Litter Act 1979, the Resource Management Act 1991, and other Council bylaws.

#### Perceived and actual problems

9. The bylaw's purpose is to balance the different needs and preferences of the community in relation to public places, in order to balance private use with public use. Prior to making the Christchurch City Council Public Places Bylaw 2008, the Council undertook a review of the two bylaws that were in force in the district at that time. During the course of that review,



the Council identified various problems/issues that needed to be addressed. For the purpose of this review, the Council has considered whether or not those problems still exist.

10. Commercial activities in public places (e.g. markets, busking), where appropriate and managed, can add character, vibrancy and safety to urban areas, and can attract visitors to these locations. However, trading and events need to be balanced against the needs of the environment and the impact public and commercial activities may have on private properties adjacent to public areas, as well as to general public access to, and use of, the public areas.
11. Public places provide many opportunities for the community to use and enjoy the space, however, due to the nature of public land being open to all, the competing interests can create obstructions and/or be a nuisance. Examples of obstructions are sandwich board signs on footpaths and encroachment. Obstructions in public places need to be managed to ensure access is unimpeded, particularly for pedestrians with impaired mobility. Regulation assists in managing the hazards created by obstructions.
12. The review of the bylaw has raised several issues that occur in public places which are not regulated by the current bylaw. The analysis attached to this report identifies the following specific problems and issues that staff recommend should be covered by the bylaw:
  - *Street numbering*: Requiring the owner/occupier of any building to display the building number in a position visible from the road, which would ensure greater visibility of street numbering on buildings (particularly business addresses) to assist the public, and also for emergency services to locate buildings.
  - *Signage*: Advertising and signage in public places are a means of providing information to the public. This includes businesses using signage outside their premises so they are more easily locatable. However, there is also a need to ensure that signage does not impede pedestrian or vehicular access, and to manage the proliferation of signage in some areas.
13. Another perceived issue with the 2008 bylaw, is that the bylaw provides no regulation of nuisance behaviours occurring in public places. Staff have previously provided advice to Councillors about the limitations of bylaws (such as, no instant fines) to address behavioural issues (in relation to street-based sex work and loitering).
14. There is a history of tension between street-based sex workers (SBSWs) and residents on and surrounding the northern section of Manchester Street (and now also some issues on Manchester St, south of Bealey Ave). The impacts are causing stress to the residents (particularly late night noise, offensive and hazardous litter, intimidation, vandalism, trespassing and other issue). Some residents sought a regulatory response from the Council.
15. Street begging raises a number of issues that occur in public places, including obstruction to public places, obstructions to business access ways, and nuisance behaviours. While begging appears to be a relatively low level problem, it can create a perceived significant issue for those affected.

**Is a bylaw the most appropriate tool?**

16. The bylaw enables the management of public places in order to balance the various different, and sometimes competing, lawful uses for which public places may be used. It seeks to provide for reasonable controls to protect health and safety, to protect the public from nuisance and to provide for the regulation of trading in public places.

17. Revoking the bylaw would reduce the tools that the Council has to manage the problems identified in the review, and result in a lack of regulatory options to manage the issues. Keeping the existing bylaw is not a reasonably practicable option either, as improvements and alignments with current practice, as well as new issues, have been identified through the review, and it would be inadvisable to maintain the status quo when known improvements have been identified.
18. A bylaw is the most appropriate tool to continue to provide the controls to:
  - require anyone wanting to undertake a commercial activity or to create an obstruction in a public place to get permission from the Council
  - enable the Council to declare Special Use Areas to prohibit or allow activities in specific areas, and
  - prevent barbed, razor or electrified wire from being used in fencing in a way that could endanger public safety.
19. When the 2008 bylaw was drafted, much of the prescriptive detail was removed from the bylaw, and this information was put in operational policies. The policies cover a range of issues in public places, including footpath extensions for café seating, signboards in public places, structures on roads, and trading activities. This allows a greater degree of flexibility, as operational policies can be altered or updated without the need to undertake the full Special Consultative Procedure to amend the bylaw. This means that they are more flexible and can be altered as situations and needs change (in 2014 amendments were made to the LGA which mean a special consultative procedure is not required to be used for less significant bylaw amendments).

*Street numbering*

20. The Council made a decision in 2007 not to include a clause relating to "Number of properties to be displayed" (which was included in the earlier versions of the bylaw). In making this decision Council had regard to a range of factors including the results of a 2004 survey of central city businesses. A report to Council on the survey concluded that most businesses displayed adequate street numbers and that as the survey respondents were open to Council communications about the need for street numbers, that Council could achieve its objectives for adequate signage of street numbers without the need for bylaw regulation.
21. Following the earthquakes, the Royal Commission of Inquiry into the Canterbury Earthquakes highlighted problems that arose because records for each building had mainly been kept according to its postal address, not the council-allocated number (Volume 7). The Royal Commission noted that if a building has several entry points and/or multiple tenancies, then the territorial authority may have alternative addresses for the same structure. Alternatively, territorial authorities could have decided to identify a particular building by one particular address, even though different people and organisations may use several addresses. These addresses may not be the same as the postal address or the street address for the building and/or tenancy. This created issues for first responders.
22. Territorial authorities are responsible for allocating road names and numbering in New Zealand. Requiring property owners to display the council-allocated property number through a bylaw will avoid the inconsistent information recording seen in Christchurch after



the earthquakes and is a regulatory measure that will assist public health and safety in any future events.

*Signage*

23. The need for regulatory controls and general guidance regarding signage is a known issue, and should be applied district-wide. The replacement District Plan now includes more signage provisions than previous plans, however there are still some gaps, such as regulation of sandwich boards and remote signage.
24. Regulation via a bylaw is considered the most appropriate method to control signage such as sandwich boards, and effectively resolve issues about signs. While the Council can provide guidance to sign owners in a policy, it can only remove any offending signs/boards if there is a bylaw in place. If required, seizure of property will be a more effective enforcement tool than a prosecution and fine (although these tools are also not available if Council only has a policy).

*Antisocial behaviour*

25. In general, it is accepted that Council control of public places through a bylaw should not:
  - Apply to matters that are covered adequately by other legislation;
  - Deal with matters that unnecessarily restrict individual freedoms;
  - Cover matters that are insignificant in effect or magnitude;
  - Deal with matters that can be more appropriately dealt with by other tools at the Council's disposal; and
  - Be impractical to enforce.
26. The LGA does not provide for an infringement (instant fine) regime for bylaws made under section 145 of the LGA. There is no dispute that nuisance or antisocial behaviours are problematic; however, the tools available to the Council are limited. For some anti-social issues (such as street-based sex work, begging and loitering), there are other tools available for addressing behavioural issues, and many behavioural matters are already covered under existing law, in particular, the Summary Offences Act 1981, which the Police enforce.
27. On 2 November 2017, the Council agreed not to develop a bylaw to regulate the location of street-based sex workers (SBSWs) away from residential areas. This was largely because the only means to create a bylaw is under section 145 of the Local Government Act, and this does not enable instant fines, give the Police any special enforcement powers, or allow arrests, meaning any bylaw would have been very difficult to enforce.
28. Instead, the Council has formed a collaborative community partnership to find non-regulatory ways of reducing the issues. The group will meet regularly and report to the Regulatory Performance Committee on a quarterly basis.
29. Similarly, the Council, through the Safer Christchurch Governance Group, is working to support the development of multi-stakeholder working group over a six month period to consider actions and generate a partnership to assist the street begging community under the Safer Christchurch umbrella. Staff will report to the Social and Community Development Committee on this working party.

**Conclusion**

30. The review concludes that the problems that existed in 2008 are still present, and a bylaw is needed/the most appropriate tool to address the problems discussed above. In drafting a replacement bylaw, staff will look at known and emerging issues where regulation may be needed and assess whether a bylaw is appropriate, and will be effective.
31. The review also determines that regulation against antisocial behaviour would not be the most appropriate tool to manage the issues, which are often complex. Staff consider that existing legislation is sufficient to deal with most incidences that cause nuisance to the public and the Council is continuing to address these issues through collaborative working parties.

TABLE 1: CLAUSE-BY-CLAUSE ANALYSIS OF DRAFT PUBLIC PLACES BYLAW 2018

Existing bylaw coverage	Issues and analysis
<b>Interpretation (definitions)</b>	<ul style="list-style-type: none"> <li>• Where appropriate, it can be helpful for bylaws to use wording already established in legislation or in case law.</li> <li>• The definitions in the bylaw are fit for purpose, and most do not need to be changed. However if the bylaw is to be replaced, there may be a need for additional definitions to be added, and terminology in the current bylaw could be updated and modernised at that time.</li> </ul>
<b>Object of the bylaw (purpose)</b>	<ul style="list-style-type: none"> <li>• The 2008 bylaw's purpose is to balance the different needs and preferences of the community in relation to public places, in order to balance private use with public use. Requiring Council permission to undertake certain activities in necessary to achieve this balance.</li> <li>• The purpose is still relevant. The bylaw-making power in the LGA enables the council to regulate, among other things, to: <ul style="list-style-type: none"> <li>- Protect the public from nuisance, promote and maintain public health and safety, and minimise the potential for offensive behaviour in public places;</li> <li>- Regulate a number of activities, including trading in public places; and</li> <li>- Manage, regulate against or protect from damage, misuse or loss, certain structures, infrastructure and land under the control of the territorial authority.</li> </ul> </li> </ul>
<b>Commercial Activities</b> The bylaw requires anyone wanting to undertake commercial activities in a public place to get permission from the Council. A permit may be subject to certain terms and conditions.	<ul style="list-style-type: none"> <li>• Commercial activity is regulated to restrict exclusive use of public places and so the Council is aware of who is carrying out commercial activities on Council land and to manage locations and times.</li> <li>• Trading and events in public places, where appropriate and managed, can add character, vibrancy and safety to urban areas, and can attract visitors to these locations.</li> <li>• However, trading and events need to be balanced against the needs of the environment and the impact public and commercial activities may have on private properties adjacent to public areas, as well as to general public access to, and use of, the public areas. There are many businesses wanting to use public places to do business (or expand their existing businesses), for example the popularity of food trucks and markets continues to grow therefore, it is reasonable to regulate commercial activities in public places.</li> <li>• To avoid repetition throughout the bylaw, the permit conditions may be better placed in a general clause about permissions or attached to the permit itself.</li> <li>• Examples of commercial activities include market stalls, events, mobile traders, busking, street collections and commercial activities in parks.</li> </ul>

Existing bylaw coverage	Issues and analysis
<b>Obstructions</b> The bylaw requires anyone wanting to erect or place any thing, in or on a public place to get permission from the Council. A permit may be subject to certain terms and conditions.	<ul style="list-style-type: none"> <li>Obstructions may be unavoidable, e.g. unloading a truck to take stock into a shop, in which case they should occur in the safest way, for as little time as possible, and alternative arrangements may need to be made to accommodate other users.</li> <li>Obstructions continue to be an identified issue. A bylaw clause is reasonable to ensure pedestrian and vehicular traffic is not impeded, particularly for people with impaired mobility.</li> <li>To avoid repetition throughout the bylaw, the permit conditions may be better placed in a general clause about permissions or attached to the permit itself.</li> </ul>
<b>Operational policies</b>	<ul style="list-style-type: none"> <li>When the 2008 bylaw was drafted, much of the prescriptive detail was removed from the bylaw, and this information was put in operational policies. This allows a greater degree of flexibility, as operational policies can be altered or updated without the need to undertake the full Special Consultative Procedure to amend the bylaw. This means that they are more flexible and can be altered as situations and needs change.</li> <li>An explanatory note to the bylaw lists the relevant operational policies. The Trading and Events in Public Places Policy 2010 is currently under review, to coincide with the Public Places Bylaw review.</li> </ul>
<b>Permit conditions</b>	<ul style="list-style-type: none"> <li>The bylaw has a number of clauses relevant to the permit conditions and requirements (must display permit, permit not transferable)</li> <li>Various circumstances arise where it may be necessary to alter, suspend or cancel a permit, including when the permit conditions have been breached, or if for example an event is being held in the location where a regular food truck operates.</li> <li>This bylaw clause allows the Council to effectively monitor public places and ensure the activity is suitable for the environment (particularly in the changing post-earthquake city), that permit conditions are being met, and that temporary activities can be accommodated.</li> <li>It is reasonable to have such a clause as a permit does not give permanent exclusive use of public places. However the specific detail may not be necessary in the bylaw as it will form part of a permit.</li> </ul>
<b>Fees</b>	<ul style="list-style-type: none"> <li>Fees are set annually through the Annual Plan process. As many people are wanting to use public places for commercial gain, it is reasonable for the Council to charge for the use of the space.</li> <li>There are certain activities where a fee is not payable, e.g. busking in special use areas listed in the explanatory note.</li> </ul>

Existing bylaw coverage	Issues and analysis
<p><b>Special use areas</b></p> <p>The Council may by resolution, and on any conditions the Council thinks fit, declare that any public place or specified part of a public place be:</p> <ul style="list-style-type: none"> <li>- Set aside for a special use or activity, or</li> <li>- Cannot be used for a particular use or activity.</li> </ul>	<ul style="list-style-type: none"> <li>• The bylaw allows the Council to restrict, by resolution, the use of areas where certain activities are not suitable for the location, e.g. creates safety risks, causes damage, or creates a nuisance to other users.</li> <li>• Conversely, Council can also allocate locations where certain activities can occur without the need for a written permit, such as the current Speaker's Corner in Cathedral Square. This gives people the opportunity to spontaneously partake in the activity, and reduces the administrative time/cost to process applications.</li> <li>• An explanatory note in the bylaw specifies the locations of special use areas: <ul style="list-style-type: none"> <li>- <i>Speakers' Corner</i>: Speakers' Corner was an area in Cathedral Square set aside for the purpose of public speaking, and is located on the eastern side of the Godley Statue (declared at a Council meeting on 23 November 2000). A new public speakers' corner opened in June 2013 and is now sited on privately owned land on the corner of Fitzgerald Avenue and Ferry Road.</li> <li>- <i>Busker areas</i>: The Council resolved under the provisions of the Christchurch City Public Places Bylaw 2008 that areas of Cathedral Square, parts of City Mall (now ReStart Mall), and parts of Worcester Boulevard do not require a permit for the purposes of busking, provided that the busking conditions are complied with.</li> </ul> </li> <li>• With post-earthquake developments well underway, there is an opportunity to review the special use areas and determine if there is a need to add or remove any locations for specific activities. Any proposals will be discussed in the follow up report in July to be resolved by Council under the Special Use Areas clause.</li> </ul>
<p><b>Barbed, razor or electrified wire</b></p> <p>Barbed, razor or electrified wire may not be used within one metre of a public place, unless the wire is at a height 2.5 metres or more above ground level, or in a rural area.</p>	<ul style="list-style-type: none"> <li>• The bylaw making power allows the Council to address dangerous fencing of properties adjoining public places, e.g. building sites or gang residences, to protect people using the adjacent public place (footpath, etc.). This continues to be an issue, particularly with the many building sites in the city, post-earthquake.</li> <li>• This clause does not apply to the use of barbed wire to fence stock in rural areas as this activity does not present the same safety concerns as areas adjacent to footpaths and other public areas.</li> </ul>
<p><b>Offence and penalty</b></p>	<ul style="list-style-type: none"> <li>• There is no infringement regime available at this time for breaching a bylaw made under the LGA.</li> <li>• Taking a prosecution is costly and may be deemed extreme for some breaches of the bylaw.</li> </ul>



## 9. Review of the Cemeteries Bylaw 2013

Reference: 18/87138

Contact: Ruth Littlewood Ruth.littlewood@ccc.govt.nz 941-5574

### 1. Purpose and Origin of Report

#### Purpose of Report

- 1.1 The purpose of this report is for the Regulatory Performance Committee to report to Council about the first stage of the review of the Cemeteries Bylaw 2013 and to recommend that the Council make certain decisions with regard to the review.

#### Origin of Report

- 1.2 The Local Government Act 2002 (LGA) requires bylaws to be reviewed within certain timeframes. This report is to facilitate compliance with statutory bylaw review requirements.

### 2. Significance

- 2.1 The decisions in this report low significance in relation to the Christchurch City Council's Significance and Engagement Policy.
- 2.2 The level of significance was determined having regard to the small number of people affected by the bylaw and the technical nature of the bylaw.
- 2.3 A community engagement and consultation process will follow the statutory review as outlined in this report.

### 3. Staff Recommendations

That the Regulatory Performance Committee recommends that the Council:

1. Note that the Local Government Act 2002 requires bylaws to be reviewed within certain timeframes, and that the Cemeteries Bylaw 2013 must be reviewed by 27 June 2018;
2. Note that in order to undertake a review of the bylaw, the Local Government Act 2002 requires a council to make a determination under section 155; and
3. Note that a subsequent report discussing proposed changes to the bylaw, and public consultation on the bylaw changes, will be presented to the Regulatory Performance Committee and Council in July 2018.
4. Resolves that a bylaw is the most appropriate way of addressing the perceived problems relating to Council controlled cemeteries in accordance with section 155(1) of the Local Government Act 2002, and identified in this report, and that a bylaw is required to regulate activities and conduct taking place in cemeteries.
5. Agrees that draft bylaw amendments be prepared for consideration by the Council.

### 4. Key Points

- 4.1 This report supports the [Council's Long Term Plan \(2015 - 2025\)](#):
  - Activity: Strategic Planning and Policy
  - Level of Service: 17.0.19 Bylaws and regulatory policies are reviewed to meet statutory timeframes and changing needs



- 4.2 For a number of years, the Council made bylaws for cemeteries under the Burial and Cremation Act 1964. In 2013 the Council made a new bylaw for cemeteries under both the Burial and Cremation Act 1964 and the Local Government Act 2002(LGA). The LGA requires new bylaws to be reviewed within 5 years and the Cemeteries Bylaw 2013 must be reviewed by 27 June 2018. In terms of reviewing a bylaw section 155 of the LGA obliges the council to determine that a bylaw is the most appropriate way of addressing the perceived problem(s).
- 4.3 This report only concerns the bylaw review. A subsequent report will recommend any bylaw changes and the consultation on those changes. Given the priority of the Long Term Plan consultation process in the first half of 2018, consultation on this (and other bylaws) will occur later in the year.
- 4.4 In terms of the need for a bylaw, the problems that existed in 2013 are still present and a bylaw is needed to provide controls on activities within the Council's cemeteries. The bylaw provides the regulatory framework for the Cemeteries Handbook which sets out in detail the terms and conditions for users of the cemeteries including the conduct of visitors in cemeteries.
- 4.5 In terms of the current bylaw, staff consider that while it is largely fit for purpose, some provisions have been identified for further analysis including the current 'object' of the bylaw and the use of terms such as 'eco burial'.

## 5. Context/Background

### Legal implications and statutory review requirements

- 5.1 The LGA requires bylaws to be reviewed within certain timeframes. In order to meet the statutory requirements for review, the Council must determine that the bylaw has been reviewed by 27 June 2018.
- 5.2 In reviewing a bylaw, a council makes certain decisions under section 155 of the LGA. This report addresses only section 155(1) which requires a council to determine that a bylaw is the most appropriate way of addressing the perceived problem(s). Section 155(2) relates to New Zealand Bill of Rights Act 1990 (NZBoRA) implications of a bylaw and section 155(3) to whether the bylaw is in the most appropriate form. Staff will prepare a further report for the committee and Council to discuss possible changes to the bylaw, the public consultation process and make recommendations to address these matters.
- 5.3 The Legal Services Unit has advised that the risk of not reviewing the bylaw within its statutory review deadline is that any bylaw made in replacement may be considered a new bylaw (and subject to a further five year review, under section 158), rather than being considered an established bylaw (and subject to a subsequent ten year review, under section 159).
- 5.4 The Legal Services Unit has advised that there are no enforcement implications relating to meeting or not meeting the review deadline. Even if the bylaw were not reviewed within the statutory review deadline, the bylaw would still be enforceable for two years after the required review date. After this time, a bylaw not otherwise revoked would be automatically revoked by section 160A of the LGA.
- 5.5 Any proposed changes to the bylaw will be covered in a subsequent report, followed by a consultation process.

### Bylaw-making powers and enforcement options

- 5.6 The bylaw is made under section 146 (b)(v) of the LGA which specifically identifies cemeteries as land and infrastructure for which bylaws can be made and also under section 16 of the Burial and Cremation Act 1964. Both of these acts empower councils to make bylaws for the management and protection of cemeteries.
- 5.7 The penalty for breaching a bylaw under the LGA is prosecution, and a fine on conviction of up to \$20,000. There is no infringement (instant fines) regime available at this time for breaching a

bylaw made under the LGA. However, there is a range of other enforcement options and tools available under the LGA (for example, seizing offending equipment, or recovering costs from damage).

- 5.8 Staff note that section 16(h) of the Burial and Cremation Act 1964 also allows the Council to prescribe fines for the bylaw breach. This is an outdated provision and fines under this Act cannot exceed *50 pounds in any case and, where the breach is a continuing one, not exceeding 5 pounds for every day or part of a day during which the breach has continued.*
- 5.9 In addition enforcement officers have tools under other legislation, such as the Litter Act 1979, the Resource Management Act 1991, and other Council bylaws.

### Section 155 Report and Options Analysis

- 5.10 When reviewing a bylaw under the Local Government Act 2002, the Council must comply with the matters in section 155 of that Act which requires the Council to determine whether the bylaw is the still most appropriate way of addressing the perceived problem. Attachment A to this report contains a section 155 analysis for the review of the bylaw.
- 5.11 The issue or problem in this particular instance is the appropriate management of activities and works in cemeteries and the Council needs to ask the question in relation to the current cemeteries bylaw – is it still the most appropriate way to address the particular issue?
- 5.12 Section 77 of the Local Government Act 2002 requires the Council, in the course of a decision making process, to seek to identify and assess all reasonably practicable options for the achievement of the objectives. The attached section 155 report identifies three practical options:
- Revoke the bylaw and rely on voluntary co-operation to ensure compliance with the terms and conditions contained within the Cemeteries Handbook.
  - Replace the 2013 bylaw with a new bylaw. Staff do not recommend this option as the bylaw on the whole remains fit for purpose.
  - Amend the current bylaw. This is the preferred option and staff will present the committee and the Council with draft amendments to the bylaw later this year.
- 5.13 Staff consider that the 2013 bylaw is generally in an appropriate form. The current bylaw still works well although it may be desirable to make some minor changes to its clauses. It allows the Council to set out more detailed rules in the Cemeteries Handbook, and the flexibility to amend the Handbook as and when required.

### Conclusion

- 5.14 The Council's Cemeteries Bylaw 2013 provides the legal framework for the matters addressed in detail in the Cemeteries Handbook. The review of the bylaw concludes that the 'problem' that existed in 2013 is still present and a bylaw remains the most appropriate tool to manage cemeteries. In drafting possible amendments to the bylaw, staff will consider any new and emerging issues.

### Attachments

No.	Title	Page
A <a href="#">↓</a>	S155- Review of the Christchurch City Council Cemeteries Bylaw 2013	47

## Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

## Signatories

<b>Author</b>	Ruth Littlewood - Senior Policy Analyst
<b>Approved By</b>	Helen Beaumont - Head of Strategic Policy Brendan Anstiss - General Manager Strategy and Transformation

Review of the Christchurch City Council  
Cemeteries Bylaw 2013

Section 155 Report

Introduction

1. Under section 158 and 159 of the Local Government Act 2002 (LGA), the Council is required to review its bylaws at five and then 10 yearly intervals.
2. This is the first review of the Cemeteries Bylaw 2013 (five years after adoption). In order to meet the statutory requirements for review, the bylaw must be reviewed by 27 June 2018.
3. When the Council reviews a bylaw, section 160 of the Act requires the Council to review the bylaw by making the determinations required by section 155.
4. Section 155 of the LGA must be followed when reviewing a bylaw. Section 155(1) requires a council to determine whether a bylaw is the **most appropriate way of addressing a perceived problem**. This report provides the analysis of whether a bylaw is the most appropriate tool to address those problems.
5. There are two further parts to section 155 (determining that a bylaw is in the most appropriate form, and assessing whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990). These two aspects will be further considered when staff bring a further report to the Committee and Council, which will recommend any bylaw changes and consultation on those changes.

Perceived and actual problems

6. The problem in this particular instance is the appropriate management of cemeteries and activities in cemeteries and the Council needs to ask the question in relation to the existing cemeteries bylaw – is it still the most appropriate way to address the particular issue?
7. Section 77 of the Local Government Act 2002 requires the Council, in the course of a decision making process, to seek to identify and assess all reasonably practicable options for the achievement of the objectives. This is also part of the assessment under section 155. The following options exist:
  - Revoke the bylaw and rely on voluntary co-operation to ensure compliance with the terms and conditions contained within the Cemeteries Handbook. The voluntary option was considered by the Council in 2013 and rejected as impractical. Over many years this Council (and its predecessor councils) have enacted cemeteries bylaws and as stated in the Statement of Proposal for the 2013 bylaw “the bylaws have generally proved to work well”.
  - Replace the 2013 bylaw with a new bylaw. Staff do not recommend this option as the bylaw on the whole remains fit for purpose. While it may be desirable to make some minor changes to update the provisions, the current bylaw still works well.
  - Amend the current bylaw. This is the preferred option and staff will present the committee and the Council with draft amendments to the bylaw later this year.
8. A clause by clause analysis of the bylaw is provided in the form of a table to this s155 report. Staff consider that the 2013 bylaw is generally in an appropriate form. The discretion it leaves to the Council in relation to approving any changes to the Cemeteries Handbook, which sets the more detailed “rules” that stand outside the bylaw is not unreasonable, because the scope of the Handbook is provided for in the bylaw. In drafting possible amendments to the bylaw, staff will consider any new and emerging issues.

#### New Zealand Bill of Rights Act 1990

9. Section 15 of the New Zealand Bill of Rights Act 1990 provides that *"every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private"*. Section 20 also states that *"a person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority"*. These rights may have some relevance to bylaws made for the purposes of regulating cemeteries. For example, if a bylaw attempted to control the way in which particular religious ceremonies at funerals could be conducted, it may breach one of these rights. In some circumstances it may be appropriate for a bylaw to provide controls that appear to limit these rights, particularly if the purpose related to the safety of persons in the cemetery. The shared use of cemeteries by different persons of different religions may also be a reason for limitations.
10. Limitations on a right may be appropriate if the limitation is considered *"a reasonable restriction in a free and democratic society"*, in accordance with section 5 of the NZBORA. The 2013 Cemeteries Bylaw does not provide for any limitations on, or contain inconsistencies with, the NZBORA, although the Cemeteries Handbook places limitations on things on graves. If this limit is contrary to any of the rights in the Act then it is a reasonable restriction in accordance with section 5, and is therefore consistent with the NZBORA.

#### Conclusions

11. The review concludes that the 'problem' that existed in 2013 is still present and a bylaw is the most appropriate tool to manage cemeteries. I

Clause-by-clause analysis of the Cemeteries Bylaw 2013

Existing bylaw coverage	Issues and analysis
Clause 1 sets out the title and commencement date of the bylaw.	No changes required.
Clause 2 'Object' -the purpose of this bylaw; providing for the management of the Council's cemeteries and stating that it does not apply to cemeteries under the control of other organisations.	The purpose of the bylaw is still relevant. Some change to the wording of this clause may make it more 'user friendly'.
Clause 3 ' Interpretation' (definitions)	It is helpful for bylaws to include definitions for ease of use; most of the definitions in the bylaw do not need to change. However some definitions may be redundant or need updating to reflect changing usage e.g. 'eco –burial'.
Clause 4 'Activities and conduct in cemeteries' .This clause provide for activities in cemeteries such as interments, monuments, working cemeteries and the payment of fees and provides that any failure to comply with the Cemeteries Handbook is a breach of the bylaw..	This is a necessary clause which sets out in general terms the range of permitted activities and makes provision for a breach of the handbook to be a breach of the bylaw.
Clause 5 'Cemeteries Handbook' provides for the Council to adopt by resolution a Cemeteries Handbook which sets out in detail the rules and conditions for activities and behaviours in cemeteries.	At the time of the 2013 review prescriptive detail within the earlier bylaws was removed and incorporated in the handbook. The handbook can be altered or updated the handbook as situations and needs change and without the need for extensive public consultation
Clause 6 'Fees'	The bylaw provides for fees for cemetery services which are set through the Annual Plan process. Given the costs incurred in operating cemeteries, it is appropriate and necessary that Council change for its services.
Clause 7 'Offence and penalty' sets out the penalties under the LGA	A successful prosecution of a bylaw offence is subject to the payment of a fine. There is no infringement regime available at this time for breaching the bylaw (rule of the Handbook) made under the LGA.
Clause 8 'General Bylaw' states that the General Bylaw clauses form part of this bylaw	The General Bylaw contains clauses common to all bylaws.
Clause 9 'Revocations'	This clauses lists the bylaws which were revoked by the passing of the 2013 bylaw.





## 10. Local Alcohol Policy - Options for Consideration

Reference: 18/48743

Contact: Gavin Thomas

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8834

### 1. Purpose and Origin of Report

#### Purpose of Report

- 1.1 The purpose of this report is to consider the options for the development of a Local Alcohol Policy.

#### Origin of Report

- 1.2 In November 2017 the Council considered whether it should review its provisional Local Alcohol Policy to address the issues raised by the High Court decision on a judicial review or to discontinue its Local Alcohol Policy process.
- 1.3 The Council decided to discontinue the Local Alcohol Policy process and requested staff report back on options for preparing a draft Local Alcohol Policy. Council resolution CNCL/2017/00001 to *instruct staff to prepare options as soon as practical for preparing a new draft alcohol policy along with a proposed timeline.*

### 2. Significance

- 2.1 The decisions in this report are of medium significance in relation to the Christchurch City Council's Significance and Engagement Policy.
  - 2.1.1 The level of significance was determined having regard to the nature of the decision. Significance and community engagement matters would be considered at a future date should the Council decide to prepare a draft Local Alcohol Policy.
  - 2.1.2 The community engagement and consultation outlined in this report reflects the assessment.
  - 2.1.3 There has been significant community engagement on the content matters potentially covered by a draft Local Alcohol Policy (although not in recent years, explicit community engagement on whether to have a Local Alcohol Policy).

That the Regulatory Performance Committee recommends that the Council:

1. Requests staff to begin work to prepare a draft Local Alcohol Policy as soon as possible, noting that:
  - a. The process to prepare a policy should enable a provisional Local Alcohol Policy to be notified by 30 August 2019 (should the Council proceed to that point), if started immediately.
  - b. The process to prepare a draft Local Alcohol Policy will follow that proposed in this report (refer section 9).
2. Appoints a working group of elected members to work with staff to;
  - a. Identify information relevant to the draft policy and what provisions that policy should include
  - b. Make recommendations to the Regulatory Performance Committee on matters relevant to policy analysis and preparation

- c. Work with staff to identify policy options
  - d. Establish and maintain effective working relationships with statutory consultees and key stakeholders
3. Appoints *[insert name here]* as the Chairperson and *[insert names here]* as the members of the working group.
4. Requests the working group to draft its Terms of Reference and authorises the Regulatory Performance Committee to:
  - a. Approve the final terms of reference and, if necessary, subsequent amendments
  - b. Approve any subsequent changes to the membership of the working group.

### 3. Key Points

- 3.1 This report supports the [Council's Long Term Plan \(2015 - 2025\)](#):
  - 3.1.1 Activity: Strategic Planning and Policy
    - Level of Service: 17.0.1 Advice is provided to Council on high priority policy and planning issues that affect the City
- 3.2 The following feasible options have been considered:
  - Option 1 – Start the process to prepare a draft Local Alcohol Policy as soon as possible (preferred option).
  - Option 2 – Defer any decision on whether to prepare a draft Local Alcohol Policy until after the triennial elections in 2019.
  - Option 3 – Do not have a Local Alcohol Policy.
- 3.3 Option Summary - Advantages and Disadvantages (Preferred Option)
  - 3.3.1 The advantages of this option include:
    - Information and data needed to inform a policy is still largely current and relevant.
    - Enables the Council to re-engage with the community on matters associated with alcohol and a local alcohol policy while they remain fresh in the minds of stakeholders and residents.
    - Will enable the Council to consider Policy issues and option provisions in light of changes in the city since the original decisions were made.
    - Puts in place a regulatory framework that enables alcohol licensing decisions to be made that take account of local issues and preferences and that seek to minimise alcohol-related harm.
    - A Local Alcohol Policy will be in place earlier than under the other options.
    - A Policy will provide a degree of certainty for both businesses and the wider community as to any restrictions on location and/ or maximum trading hours for different types and locations of licensed premises.
    - This decision is easily reversed – the Council can decide to discontinue the process at any time.
  - 3.3.2 The disadvantages of this option include:
    - The Council will need to apply funding and resources to prepare a draft Local Alcohol Policy.

- This option is unlikely to provide an opportunity for the 2019 incoming Council to have significant input to the Policy.
- Resolving appeals on a new LAP could be a lengthy (and costly) process.

## 4. Context/Background

### Legislative context

- 4.1 The Sale and Supply of Alcohol Act 2012 (the Act) enables territorial authorities to have a local alcohol policy relating to the sale, supply or consumption of alcohol within its district (section 75).
- 4.2 There is no requirement for a territorial authority to have a local alcohol policy. In the absence of a policy the District Licensing Committee use the default licensing provisions of the Act as the basis of its licensing decisions.
- 4.3 Section 77 of the Act details what may be included in a local alcohol policy. These are:
- (a) location of licensed premises by reference to broad areas;
  - (b) location of licensed premises by reference to proximity to premises of a particular kind or kinds;
  - (c) location of licensed premises by reference to proximity to facilities of a particular kind or kinds;
  - (d) whether further licences (or licences of a particular kind or kinds) should be issued for premises in the district concerned, or any stated part of the district;
  - (e) maximum trading hours;
  - (f) the issue of licences, or licences of a particular kind or kinds, subject to discretionary conditions;
  - (g) one-way door restrictions.

A local alcohol policy must not include policies on any matter not relating to licensing.

- 4.4 The Council must not produce a draft Policy without having consulted the Police, licensing inspectors, and Medical Officers of Health. A draft Policy must be consulted on using the special consultative procedure prescribed in section 83 of the Local Government Act 2002.
- 4.5 Following consideration of submissions received on the draft policy and any resulting changes being made, the Council would adopt the policy as a Provisional Local Alcohol Policy and then notify it as such. In notifying the Policy the Council gives notice of:
- (a) the provisional policy; and
  - (b) rights of appeal against it; and
  - (c) the ground on which an appeal may be made.
- 4.6 The only ground on which an element of the provisional policy can be appealed against is that it is unreasonable in light of the objectives of the Act. This introduces an implicit limitation on the content of a local alcohol policy and on the reasons for any provision contained in a local alcohol policy – it must be directed to minimising harm caused by the excessive or inappropriate consumption of alcohol.
- 4.7 The object of the Act is that—
- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- 4.8 The Act defines harm caused by the excessive or inappropriate consumption of alcohol includes—
  - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
  - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).
- 4.9 A council may at any time before the adoption of a local alcohol policy discontinue its development.

#### Previous Local Alcohol Policy process

- 4.10 This Council has, for many years, advocated for greater community involvement in alcohol licensing decisions. In 2009 the Council made submissions on the Law Commission discussion paper *Alcohol in our Lives* supporting greater community input in licensing decisions. The Council's submission on the draft Alcohol Reform Bill in 2009 again highlighted support for increased community involvement in alcohol licensing decisions.
- 4.11 Before the Act became law the Council stated it would prepare a Local Alcohol Policy as soon as possible. Following the passing of the Act, the Council commenced work on its draft Local Alcohol Policy, including undertaking an extensive survey of community attitudes to alcohol and a literature review of policy interventions available at that time.
- 4.12 In 2013 the Council approved a draft Local Alcohol Policy and consulted on its provisions, with 4,060 submissions being received, representing a wide range of views, from sector groups, local communities and individuals. The Committee made a number changes to the Policy which was completed shortly before the triennial elections in October 2013. The Council deferred notification of the provisional Policy until the new Council was in place. The incoming Council then decided to further defer notification until the first appeals on other councils' local alcohol policies had been decided.
- 4.13 In 2015 the Council notified its provisional Local Alcohol Policy triggering the appeals process to begin. Nineteen appeals were lodged and a number of parties notified the Alcohol Regulatory and Licensing Authority (ARLA) of their interest in the proceedings. Through mediation and negotiation with appellants and interested parties, the Council reached agreement with seventeen of the nineteen appellants.
- 4.14 The Council publicly notified an amended provisional Local Alcohol Policy in October 2016. Two appeals and six interested party notices were lodged with ARLA. In December 2016 Hospitality NZ filed judicial review proceedings on the Council's 29 September 2016 reconsideration decision as it related to Victoria Street. In June 2017 the High Court issued its decision on the judicial review proceedings. The Court found against the Council and the two provisional LAP appeals were stayed.
- 4.15 In November 2017 the Council considered whether it should review its provisional Local Alcohol Policy to address the issues raised by the High Court and then resubmit its provisional Local Alcohol Policy to ARLA or to discontinue the Policy development process at that point. The Council decided to discontinue the Policy process and to have staff report back in early 2018 on options on preparing a draft Local Alcohol Policy.

### National context

- 4.16 Many territorial local authorities in New Zealand have a local alcohol policy in place or are undertaking the process to prepare a policy. Christchurch's neighbouring councils of Waimakariri and Selwyn both have local alcohol policies. Other councils in Canterbury without a local alcohol policy or not in the process of preparing one are Waitaki, Mackenzie and Kaikoura District Councils.
- 4.17 Of the major metropolitan councils, Christchurch, Wellington, Napier, Hastings, Nelson and Dunedin do not have a local alcohol policy. Napier, Hastings and Nelson all are parties to regional alcohol strategies aimed at reducing alcohol-related harm. Auckland Council's policy is not yet in force as it is still subject to appeals.

## 5. Strategic Linkages

### Strategic and policy objectives related to minimising harm from alcohol

- 5.1 The Council's proposed strategic framework includes draft community outcomes that are health and safety related and which are likely to be impacted by alcohol-related harm. These are:

#### Community outcomes

##### *Strong communities*

- Safe and healthy communities

##### *Liveable city*

- Vibrant and thriving central city, suburban and rural centres

- 5.2 The Council has community safety focussed strategies and plans with direct links to alcohol and alcohol-related issues. These are:

#### *Safer Christchurch Strategy*

- Identifies "reducing harm caused by alcohol use" as one of its cross-cutting themes to be considered within each of the priority areas of the strategy
- Identifies alcohol as one of the significant contributing factors to many crimes
- Strategy Objective - Support initiatives targeting at minimising alcohol-related harm, ensuring an integrated approach with injury and crime prevention

#### *Alcohol-related harm at public events policy*

- Policy applies requires outdoor events provided by the Council, or on land controlled by the Council, or funded by the Council, where alcohol will be sold to plan for ways to reduce alcohol harm and care for people affected by alcohol.

- 5.3 The Council has an Alcohol Restrictions in Public Places bylaw which enables the Council to establish alcohol ban areas where alcohol is a cause of public disorder issues best resolved by using the alcohol ban tool. The purpose of alcohol restrictions or bans is to reduce alcohol-related harm, damage, disorder and crime, and to improve community safety in public spaces such as footpaths, streets, parks, reserves, riverbanks, and beaches.
- 5.4 The Christchurch District Plan has objectives and rules to preserve the amenity of residential areas from, amongst other things, any significant negative effects from inconsistent land use including the siting of premises selling alcohol. These are:
- 3.3.1 Enabling recovery and facilitating the future enhancement of the district
  - 3.3.7 Urban growth, form and design
  - 3.3.14 Incompatible activities

- 5.5 District Plan objective 3.3.1 above is the only objective that specifically seeks to *meet[s] the community's immediate and longer term needs ...and social and cultural wellbeing ...*
- 5.6 The implicit requirement for a local alcohol policy to address only matters related to harm minimisation mean these strategic linkages are likely to be important considerations in any decision to have a local alcohol policy or not, and if a policy is developed, what policy settings are included.

## 6. Community and stakeholder views

### Community survey

- 6.1 In 2012 the Council commissioned independent research company Research First to survey residents on their views to a range of alcohol licensing issues. The report on the findings of the survey was provided to the Council in March 2013. Responses from 1,700 residents were analysed with the sample size providing a maximum margin of error of +/- 2.4 per cent. Key findings of the survey (at a headline level) were:
- Little support for more liberal alcohol licensing
  - Little change in attitudes or behaviour to alcohol due to the earthquakes
- 6.2 Survey participants were asked to rate their level of agreement to a series of statements regarding the availability of alcohol. The statements with the highest levels of agreement were that:
- Anti-social behaviour mostly involves people who have been drinking (92%);
  - Excessive drinking leads to people being unable to carry out everyday tasks such as going to work (90%);
  - People don't feel safe in public places when there are people around who have been drinking (88%); and
  - Intimidating behaviour, assaults and violence usually involve people who have been drinking (87%).
- The statements that people disagreed with most commonly were:
- People should be able to buy alcohol readily at most hours (63% disagree, 28% agree); and
  - People should be able to buy alcohol readily throughout the city (51% disagree, 39% agree).
- 6.3 While these responses weren't to a direct question about whether or not the Council should have a local alcohol policy they did show majority support on most questions for a regulatory approach consistent with a policy that is more restrictive than the default licensing provisions of the Act.

### Draft local alcohol policy submissions

- 6.4 In 2013 the Council undertook community engagement on its draft Local Alcohol Policy. The Council received 4,060 submissions; 1,053 through the Council's *Have Your Say* portal; 1,929 from Hospitality New Zealand's Facebook survey and 1,078 from the *ChCh Late* Facebook petition, 161 from various government and community groups and organisations, with the remainder from individuals including licensees, hospitality staff and providers of live entertainment, health and social service professionals and staff, residents and representatives of local neighbourhoods.
- 6.5 As with the survey discussed above, submissions received didn't respond to a direct question about whether or not the Council should have a local alcohol policy but many did indicate

support for a regulatory approach consistent with a policy that is more restrictive than the default licensing provisions of the Act.

#### New Zealand Police

- 6.6 Local police have been supportive of the Council having a local alcohol policy from the outset of the previous policy development process. Police representatives were closely involved in the community discussions regarding the previous local alcohol policy and gave evidence at the ARLA hearings considering objections to the provisional Local Alcohol Policy.
- 6.7 Recent contact with a Police representative found they remain firmly of the view that a local alcohol policy is needed. They say that *while there are default provisions in the Act these do not necessarily reflect the needs or wishes of the Christchurch City community nor do they necessarily minimise alcohol related harm in the Christchurch context. The local alcohol policy is the vehicle by which the local community can impose provisions required to minimise alcohol related harm in Christchurch.*
- 6.8 The Police favour an immediate start to policy development, saying *any delay to a local alcohol policy will result in additional unnecessary victimisation due to alcohol related offending and harm.*

#### Medical Officer of Health

- 6.9 The Medical Officer of Health has been a strong and consistent advocate for the Council having a local alcohol policy. We did not receive a response from Doctor Humphrey regarding any preference for approach regarding a local alcohol policy but assume his view remains the same and he would support an immediate start on policy development.

#### Hospitality New Zealand

- 6.10 Hospitality NZ believes the Council should either wait for the new triennium (2019) to begin preparing a draft Local Alcohol Policy or rely only on the default provisions of the Act (and not have a Policy). They believe the conditions the District Licensing Committee can place on any licensed premises are sufficient to address matters related to alcohol-related harm.
- 6.11 Hospitality NZ states that the license application appeals process provides communities with sufficient means to have local issues considered as part of license applications.
- 6.12 Hospitality NZ note the costs incurred by the Council in preparing its previous provisional Local Alcohol Policy and the likelihood of any future policy being appealed means preparing a new policy is not fiscally responsible.

#### Licensing inspectors

- 6.13 Under the Sale and Supply of Alcohol Act, the licensing inspectors are required to “act independently when exercising and performing their functions, duties, and powers”. Operationally, it is understood that the inspectors report that they would highly value the direction that could be given in any policy. The inspectors acknowledge the importance a LAP gives the community as an avenue for them to have input in licensing matters and that this was a fundamental part of the changes in the Act. The inspectors will work with whatever regulatory framework is decided by the Council and the community and that is deemed reasonable by ARLA. The inspectors support any decision that will give certainty and clarity to the licensing environment.
- 6.14 The Council’s licensing inspectors have provided operational observations on the current licensing environment that may be of interest to the Council in its consideration on this report.
- The Christchurch approach to 3am closing was previously supported through:
    - The previous Christchurch Alcohol Policy 2004. This ceased to have effect when the Sale and Supply of Alcohol Act came into force.



- The Central City Alcohol Accord – which had agreement from central city licensees to a one-way door policy and 3:00am closing. This ceased to operate following the earthquakes.
  - The previous Provisional Local Alcohol Policy.
- Advice to parties on licensing matters:
  - The licensing inspectors provide advice to applicants for new licenses before they submit their application.
  - The general policy direction the Council was proposing through its previous local alcohol policy was well understood by licensees through the information and advice provided by inspectors.
  - Current policy gap - with no clear policy direction currently signalled, providing appropriate and practical day to day operational advice is problematic for the inspectors. A clear policy direction would enable better advice to be provided.
- There have been some practical gains since the implementation of the Act, despite the absence of a local alcohol policy:
  - Some voluntary reductions of licensed hours with some types of license, partly due to the costs of license application and annual fees under the risk based fees regime.
  - Various voluntary precinct area specific on-licence alcohol accords developing as main late night hospitality areas rebuild. This fosters and supports cooperation and consistency in management of late-night hospitality areas.
  - Communities, in various localities, have exercised their ability to object to alcohol licence applications, on licenced hours and amenity and good order criteria, where concerns relate to a particular site and operation.
- Over the past year there has been a noticeable increase in community objections to license applications based on non-application considerations under the Act and more closely aligned to matters more appropriately dealt with through a local alcohol policy:
  - An example is concerns relating to density of licensed premises and the number of types of licences in an area or across the whole city, such as off-licence bottle stores and on-licence hours to 3am near residential areas.
  - Consultation on a local alcohol policy is the only avenue for a community to voice these types of density and threshold concerns. Having this opportunity may reduce the incidence of objections to license applications on matters that can only be dealt with through a local alcohol policy.

## 7. Council initiatives to minimise harm from alcohol

- 7.1 The Council has entered into a number of regulatory and community initiatives aimed at reducing alcohol-related harm. These are both regulatory and non-regulatory with most involving collaboration with other agencies.

### Alcohol Restrictions in Public Places Bylaw

- The bylaw enables the Council to establish alcohol ban areas within the city where the drinking of alcohol or the carrying of an open alcohol container in a public place (including in a car) is prohibited.

A breach of the bylaw is an offence that may result in arrest, prosecution and/or a fine. The bylaw is enforced by NZ Police, using special powers under the Local Government Act.

There are 13 ban areas in place with five in force 24 hours a day, 7 days a week and the remainder covering either specific times of day or specific days of the year.

#### **Christchurch Alcohol Action Plan**

- Christchurch Police, Christchurch City Council and the Canterbury District Health Board have developed the Christchurch Alcohol Action Plan (CAAP). The Plan provides a collective vision, strategies and actions aimed at achieving a sustained reduction in alcohol-related harm across Christchurch.

The CAAP is informed by New Zealand and international evidence; local data; and what our stakeholders and communities are saying about alcohol-related harm and how best to reduce it. It has been shaped by a shared vision, values and desired outcomes developed in consultation with the community.

The CAAP programme of action is extensive and builds on and complements existing activities within the regulated environment and identifies wider areas in the non-regulated environment where agencies can gain efficiencies and effectiveness through collaborative planning and service delivery.

#### **Alcohol Licensing in the Community**

- The Council has produced an information brochure and templates to assist communities to object to the granting of alcohol licenses in their communities or to communicate concerns or issues with existing premises. Council community development staff provide guidance and support to ensure communities can put forward their views through the licensing process. There is also extensive information and advice provided on how to navigate the licensing processes overseen by the District Licensing Committee. <https://www.ccc.govt.nz/consents-and-licences/business-licences-and-consents/alcohol/objecting-to-a-grant-for-a-licence/>

#### **Alcohol-related harm at public events policy**

- Policy requires outdoor events provided by the Council, or on land controlled by the Council, or funded by the Council, where alcohol will be sold to plan for and implement ways to reduce alcohol harm and care for people affected by alcohol at the event.
- 7.2 The effect these initiatives are having, or are expected to have, on reducing alcohol-related harm should be considered by the Council in any decision on whether to have a local alcohol policy or not. The Council may consider the effects these initiatives are having reduces the need for a local alcohol policy, or alternatively may believe a local alcohol policy is needed to support and/ or add value to the initiatives outlined above.

## **8. Policy preparation process**

- 8.1 This report does not attempt to provide analysis of the specific issues associated with alcohol-related harm that would be included in the issues and options assessment of policy development.
- 8.2 Community views and those of statutory consultees and Hospitality NZ are included for the elected member's information rather than to pre-empt any thinking around alcohol-related harm issues and/ or policy approaches. If the Council decides to proceed with preparation of a local alcohol policy all community engagement requirements would be fulfilled as part of that process.

- 8.3 Preparation of a local alcohol policy would include fresh alcohol-related harm statistics being sought and analysed where applicable and a review of relevant literature undertaken.
- 8.4 A fresh community survey would be commissioned to obtain community views on key matters associated with alcohol licensing, alcohol-related harm and possible policy approaches. This would closely follow the methodology used for the survey undertaken in 2012.

## 9. Option 1 - Prepare a draft Local Alcohol Policy as soon as possible. (preferred)

### Option Description

- 9.1 Undertake work required to prepare a Local Alcohol Policy.
- 9.2 Proposed timeline for preparing a Local Alcohol Policy

	Key Steps	Complete by:
1	Briefing for elected member working party	April 2018
	Gather required information/data. <ul style="list-style-type: none"> <li>Literature review</li> <li>Community survey</li> <li>Stakeholder forum(s)</li> <li>Consult with statutory consultees (Police, Medical Officer of Health and Licensing Inspectors)</li> </ul>	May 2018
2	Analysis - define policy problem/issue and scope of project. Identify possible policy responses	End of June 2018
3	Seek Community Board feedback on draft proposals	End of August
4	Committee and Council workshops	End of September
5	Prepare draft LAP for approval of Council	End of October
6	Adopt/ notify draft LAP and receive submissions	November/ December 2018
7	Hearing of submissions including deliberations on provisional LAP	February 2019
8	Council decision on provisional LAP	April 2019
9	Notification to allow commencement of appeals process	May 2019
10	Appeals lodged with ARLA	June 2019
11	Appeals process and adoption of LAP Process to resolve appeals commences January 2019 including hearing and consideration of appeals by ARLA. Following resolution of appeals – Council can adopt LAP. LAP brought into force. Changes to maximum trading hours apply a minimum of 3 months after public notice of adoption.	June – September 2019 This depends on hearings, appeals and other possible actions

### Significance

- 9.3 The level of significance of this option is medium which is consistent with section 2 of this report.
- 9.4 Engagement requirements for this level of significance are limited to whatever the Council considers appropriate at this time. A special consultation procedure would be undertaken if the Council adopts a draft Local Alcohol Policy for consultation purposes.
- 9.5 In addition to requirements related to the Council's Significance and Engagement Policy the Council must engage with the statutory consultees (NZ Police, Medical Officer of Health, licensing inspectors) as part of the process to prepare a draft Local Alcohol Policy.

### Impact on Mana Whenua

- 9.6 This option does not involve a significant decision in relation to ancestral land or a body of water or other elements of intrinsic value, therefore this decision does not specifically impact Ngāi Tahu, their culture and traditions.

### Community Views and Preferences

- 9.7 This report has summarised community views and preferences captured through the previous draft local alcohol policy process and has specifically included fresh views and preferences from statutory consultees and key affected stakeholders. Their views are included in the narrative of this report. As described in 9.4 above, further consultation will be undertaken if the Council decides to prepare a draft local alcohol policy.
- 9.8 The NZ Police and Medical Officer of Health (both statutory consultees) support the Council preparing a local alcohol policy as soon as possible. Hospitality NZ believes the Council should not prepare a local alcohol policy at this time.
- 9.9 Community engagement on the previous draft Local Alcohol Policy found support for the Council having a policy from community boards and some caveated support from residents surveyed (where a majority wanted the Council to have more restrictive licensing policies than those provided by the Act).

### Alignment with Council Plans and Policies

- 9.10 This option is consistent with Council's Plans and Policies.

### Financial Implications

- 9.11 Cost of Implementation – to prepare a draft Local Alcohol Policy, undertake a special consultation procedure, analyse submissions and make recommendations to the Council is estimated to cost \$150,000 (excluding legal costs associated with any appeals or subsequent legal actions initiated).
- 9.12 Maintenance / Ongoing Costs – Not applicable at this stage.
- 9.13 Funding source – existing budgets – largely from Strategic Policy team and Legal Services Unit.

### Legal Implications

- 9.14 If the Council adopts this option it will need to comply with the statutory requirements set out in the Sale and Supply of Alcohol Act relevant to the content of a Local Alcohol Policy and the process for drafting and adopting a provisional local alcohol policy.

### Risks and Mitigations

- 9.15 There is a risk that some stakeholders or community members who want to be involved in the process to prepare a draft Local Alcohol Policy are unable to engage in the process due to it being fast-tracked. This may result in these stakeholders and residents feeling unfairly shut out of the process.

9.15.1 Residual risk rating: The residual rating of the risk after the below treatment(s) are implemented will be Low/ Medium

9.15.2 Planned treatment(s) include

- Engage as broadly as practicable within the confines the timeline to enable stakeholders and residents to have their views considered as part of the process.
- Ensure the policy development process is well documented on the CCC website and that it is clear there are opportunities to be involved.
- Maintain open channels of communication with community boards, stakeholders and residents to promote engagement opportunities.

### Implementation

9.16 Implementation dependencies - information required from the statutory consultees – Police statistics, Canterbury District Health Board statistics and Council alcohol licensing data. In the past relevant data has sometimes been difficult to obtain within required timelines.

9.17 Implementation timeframe – complete a draft Local Alcohol Policy in time for it to be notified as a Provisional Local Alcohol Policy by end of August 2019.

### Option Summary - Advantages and Disadvantages

9.18 The advantages of this option include:

- Information and data needed to inform a policy is still largely current and relevant.
- Enables the Council to re-engage with the community on matters associated with alcohol and a local alcohol policy while they remain fresh in the minds of stakeholders and residents.
- Will enable the Council to consider Policy issues and options provisions in light of changes in the city since the original decisions were made.
- Puts in place a regulatory framework that enables alcohol licensing decisions to be made that take account of local issues and preferences and that seek to minimise alcohol-related harm.
- A Local Alcohol Policy will be in place earlier than under the other options.
- A Policy will provide a degree of certainty for both businesses and the wider community as to any restrictions on location and/ or maximum trading hours for different types and locations of licensed premises.
- This decision can be reversed – the Council can decide to discontinue the process at any time.

9.19 The disadvantages of this option include:

- The Council will need to apply funding and resources to prepare a draft Local Alcohol Policy.
- This option is unlikely to provide an opportunity for the 2019 incoming Council to have significant input to the Policy.
- Resolving appeals on a new LAP could be a lengthy (and costly) process.

## 10. Option 2 – Defer any decision on whether to prepare a Local Alcohol Policy until 2019/20

### Option Description

10.1 Defer any decision on whether to prepare a draft Local Alcohol Policy until after the triennial elections in 2019.

- 10.2 This option could include direction from the Council to staff to continue with some information gathering and other low cost policy preparation functions. This would enable policy preparation to proceed more quickly if there was a decision to prepare a local alcohol policy in late 2019 (after the October 2019 elections).

### Significance

- 10.3 The level of significance of this option is assessed as being medium, which is consistent with section 2 of this report.
- 10.4 Engagement requirements for this level of significance are not applicable at this time.

### Impact on Mana Whenua

- 10.5 This option does not involve a significant decision in relation to ancestral land or a body of water or other elements of intrinsic value, therefore this decision does not specifically impact Ngāi Tahu, their culture and traditions.

### Community Views and Preferences

- 10.6 This report has summarised community views and preferences captured through the previous draft local alcohol policy process and has specifically included fresh views and preferences from statutory consultees and key affected stakeholders. Their views are included in the narrative of this report. As described in 9.4 above, further consultation will be undertaken if the Council decides to prepare a draft local alcohol policy.
- 10.7 The NZ Police and Medical Officer of Health support the Council preparing a local alcohol policy as soon as possible. Hospitality NZ believes the Council should not prepare a local alcohol policy at this time.
- 10.8 Community engagement on the previous draft Local Alcohol Policy found support for the Council having a policy from community boards and implicit support from residents surveyed (where a majority wanted the Council to have more restrictive licensing policies than those provided by the Act).

### Alignment with Council Plans and Policies

- 10.9 This option is not inconsistent with Council's policies and plans but does not immediately support achievement of some Council policies and plans.

### Financial Implications

- 10.10 Cost of Implementation – no budget required at this time.
- 10.11 Maintenance / Ongoing Costs – not applicable.
- 10.12 Funding source – not applicable.

### Legal Implications

- 10.13 There is not a legal context, issue or implication relevant to this decision at this time.
- 10.14 This report has been reviewed and approved by the Legal Services Unit.

### Risks and Mitigations

- 10.15 There is a risk that opportunities to reduce alcohol-related harm in Christchurch won't be realised. This may result in alcohol-related harm in Christchurch not being minimised.
- 10.15.1 Residual risk rating: The residual rating of the risk after the below treatment(s) is implemented will be medium/ low.
- 10.15.2 Planned and current treatment(s) include the various other initiatives the Council is delivering or plans to deliver to reduce alcohol-related harm that are detailed in section 7 of this report.

### Implementation

10.16 Implementation dependencies - not applicable at this time.

10.17 Implementation timeframe – not applicable at this time.

### Option Summary - Advantages and Disadvantages

10.18 The advantages of this option include:

- The full process to develop a draft local alcohol policy and notify a provisional local alcohol policy can be undertaken by one Council over the 2019-22 triennium.
- The ongoing development of the city, and particularly the hospitality sector in the central city, can be taken into account in policy decision-making.
- No costs are incurred at this time.

10.19 The disadvantages of this option include:

- The opportunities to reduce alcohol-related harm that can be applied through the provisions of a local alcohol policy won't be available to be used.

## 11. Option 3 – Do not have a local alcohol policy

### Option Description

11.1 The Council could decide not to have a Policy and to rely instead on the default licensing provisions of the Act.

### Significance

11.2 The level of significance of this option is medium, which is consistent with section 2 of this report.

### Impact on Mana Whenua

11.3 This option does not involve a significant decision in relation to ancestral land or a body of water or other elements of intrinsic value, therefore this decision does not specifically impact Ngāi Tahu, their culture and traditions.

### Community Views and Preferences

11.4 As for options 1 and 2.

### Alignment with Council Plans and Policies

11.5 This option is not inconsistent with Council's Plans and Policies. The Council has community outcomes, policies and strategies that have explicit or implicit objectives to promote community health and wellbeing and to reduce alcohol-related harm. However, not having a local alcohol policy may not necessarily be inconsistent with these policies and strategies.

### Financial Implications

11.6 Cost of Implementation – Nil.

11.7 Maintenance / Ongoing Costs – Nil.

11.8 Funding source – Not applicable.

### Legal Implications

11.9 There is not a legal context, issue or implication relevant to this decision

11.10 This report has been reviewed and approved by the Legal Services Unit



### Risks and Mitigations

11.1 There is a risk that opportunities to reduce alcohol-related harm in Christchurch won't be realised. This may result in alcohol-related harm in Christchurch not being minimised.

11.1.1 Residual risk rating: The residual rating of the risk after the below treatment(s) is implemented will be medium/ low.

11.1.2 Planned and current treatment(s) include the various other initiatives the Council is delivering or plans to deliver to reduce alcohol-related harm that are detail in section 7 of this report.

### Implementation

11.2 Implementation dependencies - not applicable.

11.3 Implementation timeframe – not applicable.

### Option Summary - Advantages and Disadvantages

11.4 The advantages of this option include:

- No costs are incurred at this time.

11.5 The disadvantages of this option include:

- The opportunities to reduce alcohol-related harm that can be applied through the provisions of a local alcohol policy won't be able to be used.

### Attachments

There are no attachments to this report.

### Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

### Signatories

Author	Gavin Thomas - Team Leader Policy
Approved By	Helen Beaumont - Head of Strategic Policy Brendan Anstiss - General Manager Strategy and Transformation



## 11. Building Consenting Unit Update - March 2018

Reference: 18/130906

Presenter(s): Robert Wright, Head of Building Consenting

### 1. Purpose and Origin of Report

- 1.1 The purpose of this report is to provide the Regulatory Performance Committee with an update of the Building Consenting Unit of the Consenting and Compliance Group. The information relates to January 2018. The performance report for January is attached (Attachment A).

### 2. Staff Recommendations

That the Regulatory Performance Committee:

1. Receives the information in this report.

### 3. Building Consenting Update

#### 3.1 Earthquake Prone Buildings

The register of earthquake prone buildings continues to be monitored and updated. Link to the register below:

<http://www.mbie.govt.nz/info-services/building-construction/safety-quality/earthquake-prone-buildings>

There are currently 626 earthquake prone buildings in Christchurch on the MBIE register. During January, 17 buildings were removed and 16 were added.

#### 3.2 Stakeholder Engagement

Building Consenting managers meet and liaise regularly with a variety of key stakeholders. During January meetings were held with three large, and a number of smaller group home builders.

Case managed stakeholders were invited to participate in an interview for feedback on our processes and performance and five accepted. We will continue to offer this option as it provides good information on where we are doing well and if any areas of the service require improvement.

#### 3.3 Key Performance Indicators

<b>Grant building consents within 20 working days</b> – the minimum is to issue 95% of building consents with 19 working days from the date of lodgement.	Achieved at 97.6%.
<b>Grant code compliance certificates within 20 working days</b> – the minimum is to issue 95% of Code Compliance Certificates within 19 working days from the date of lodgement.	Achieved at 98.9%.
<b>Carry out building inspections in a timely manner</b> – 95% of inspections within three working days.	Achieved at 99.9%.

#### 3.4 Pre-Application Meetings

There were 33 pre-application meetings held in January 2018.

Pre-application meetings are available for projects requiring building consents, resource consents, or both. Discussions with applicants and / or their representatives are held prior to lodgement of the application and can be especially helpful before or at the design stage. The meeting(s) will involve as many staff as required (eg a planner, senior inspector, eco-advisor, case manager) to assist applicants with submitting quality applications.

Our target is that 90% of building consent applications that have had a pre-application meeting are accepted for processing.

In general, less than 5% are not accepted for processing. This number can vary depending on the complexity of the application.

### 3.5 Building Warrants of Fitness

A building warrant of fitness is a statement signed by the building owner (or owners agent), stating that the requirements of the building's compliance schedule have been fully complied with in the previous 12 months.

Issued warrants of fitness are regularly audited for accuracy. The target is to complete 360 audits annually, currently 238 audits have been completed this financial year.

### 3.6 Case Managed Services

The Partnership Approvals team is a paid service provided by the Council, with the team working closely with owners, agents and/or developers, offering guidance and assistance on our processes.

The team achieved the target of providing 80 case managed hours per week, with 270 hours completed during January. Accounting for statutory days and annual leave taken during the New Year break and less available working days in January, the target was met.

The Partnership Approvals team issue a customer service survey quarterly. December results revealed a positive 92.31% customer satisfaction with the service. An updated result will be available after the current quarter results are collated.

### 3.7 Customer Satisfaction

Building Consenting have a benchmark of achieving 80% customer satisfaction. This target was exceeded by 5.9%, with the customer satisfaction survey results for mid-January to mid-February 2018 at 85.9%.

Survey recipients are invited to provide comments if they wish and these are dealt with appropriately by managers in the Building Consenting Unit. Any ongoing themes of dissatisfaction revealed through the survey process will be reviewed, assessed and remedied if possible.

### 3.8 Eco-Design

Eco Design is on track for achieving the target of completing 250 assessments per financial year with 213 assessments completed at the end of January 2018.

### 3.9 Trending Data

Attachment B is a report showing trending data from January 2011 to January 2018.

Looking at the first graph, the purple and green year over year (YOY) lines show growth or decline, based on a comparison of the previous year. For example, looking at the first graph, where the green line dips during 2011 we experienced decline in comparison to 2010, this was due to the 2011 earthquakes and aftermath. Note that the dips and rises have levelled somewhat over the past two years showing a return to 'business as usual' in the building consenting area.

Other graphs show the estimated value of work, inspections, and code compliance with residential and commercial comparisons.

## Attachments

No.	Title	Page
A <a href="#">↓</a>	Building Consenting Dashboard Report January 2018	70
B <a href="#">↓</a>	Trending Data - January 2018	73

## Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

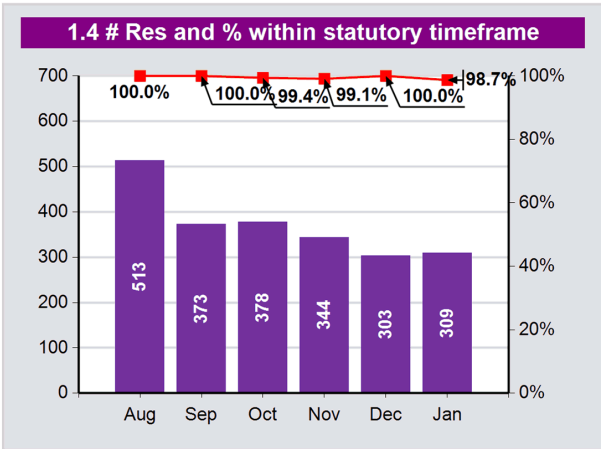
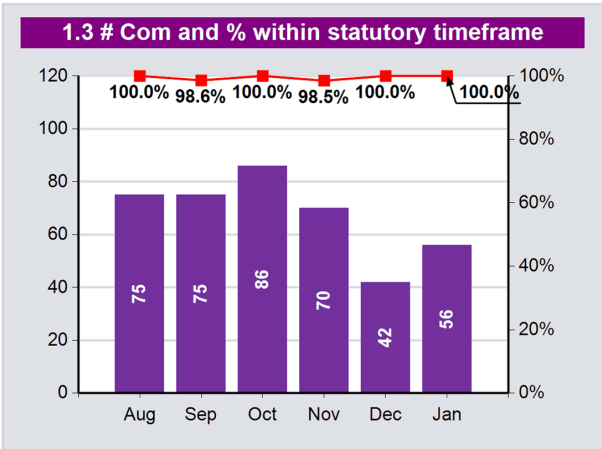
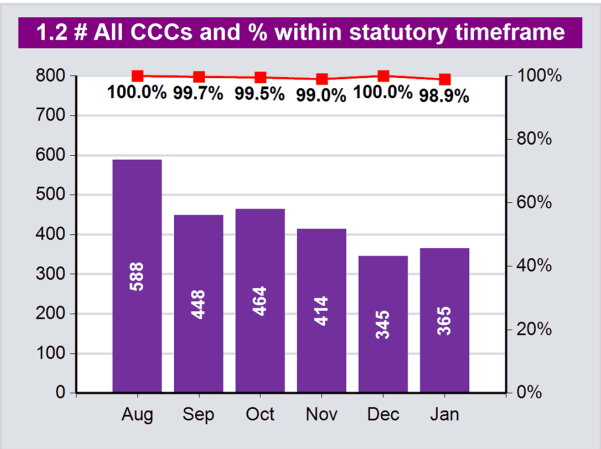
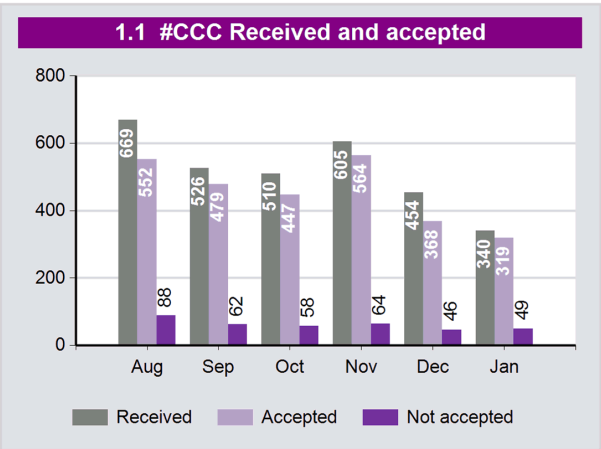
- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

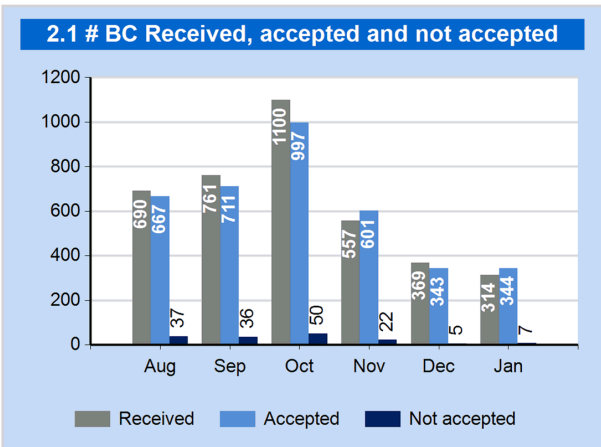
## Signatories

Author	Robert Wright - Head of Building Consenting
Approved By	Leonie Rae - General Manager Consenting and Compliance

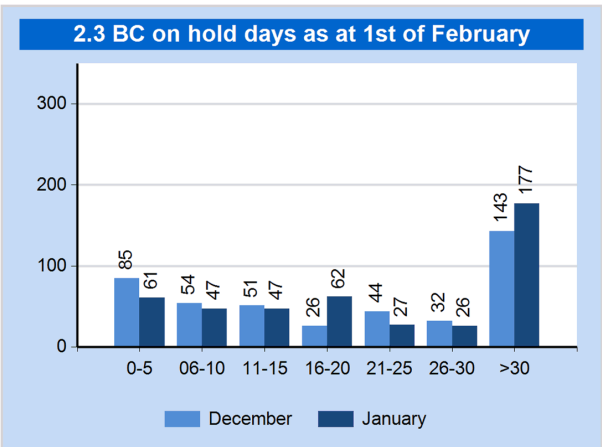
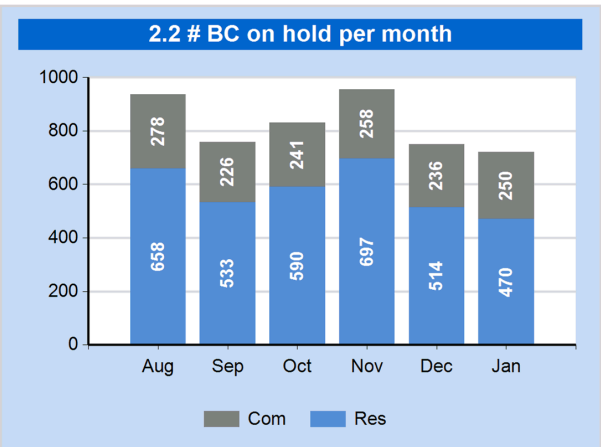
Code Compliance Certificates (CCC) decisions (S95 refusals and CCC issued)



Building Consents (BC) received / accepted



BC on hold



**2.4 BC processing summary**

# Processed			
Current Month	337	% Difference	-16.6%
Previous Month	404	Six Month Average	606
Financial YTD	4346	Last Financial YTD	3887

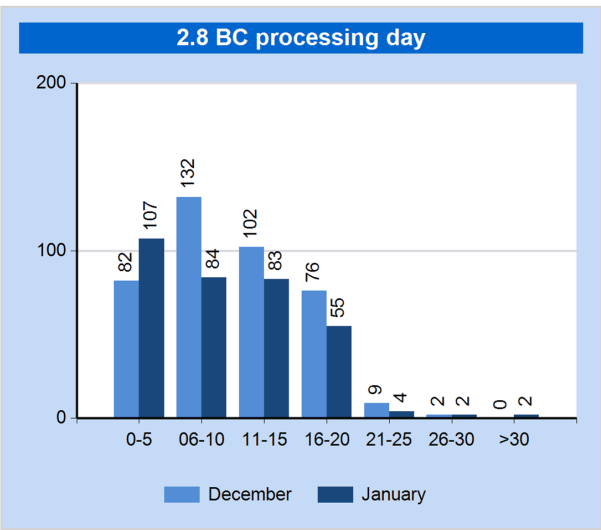
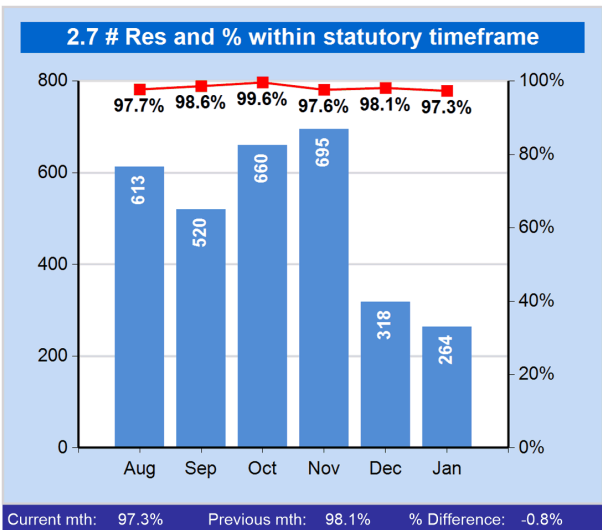
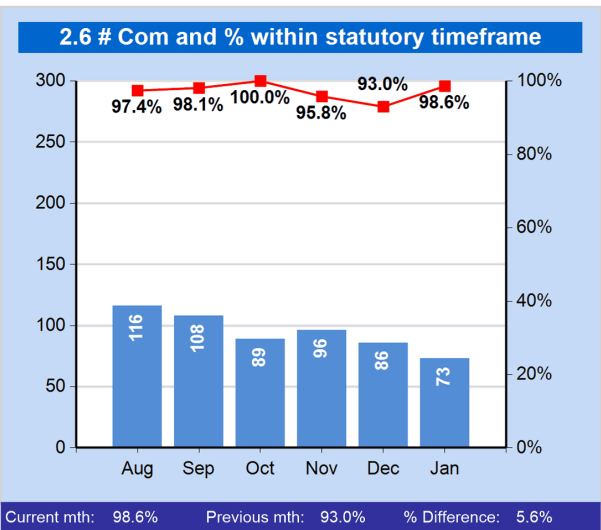
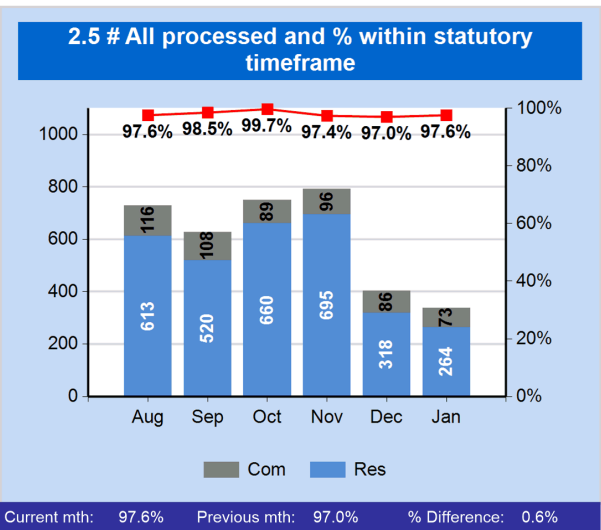
  

% Within Statutory Timeframe			
Financial YTD	98.0%	Last Financial YTD	97.6%

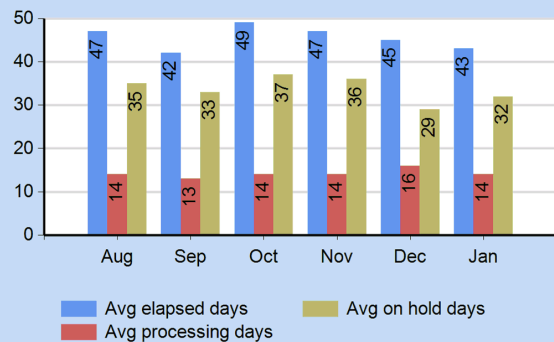
  

# On Hold			
Current Month	720	Six Month Average	825
Previous Month	750	% Difference	-4.0%

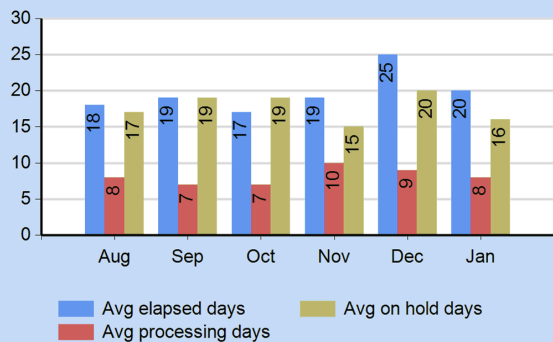
BC processing decision



2.9 Commercial average days for decisions made

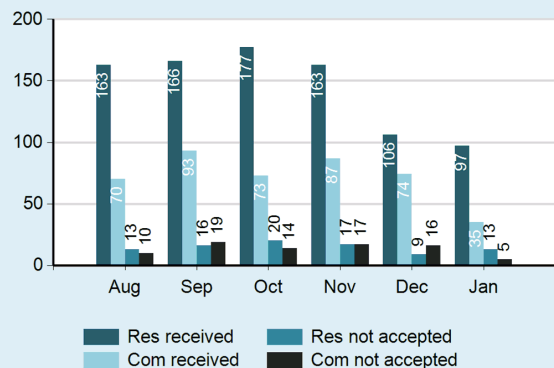


2.10 Residential average days for decisions made

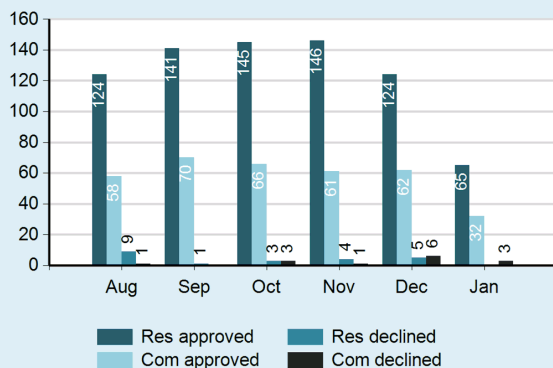


Building Act Exemptions (BAE)

3.1 # BAEs Received and not accepted

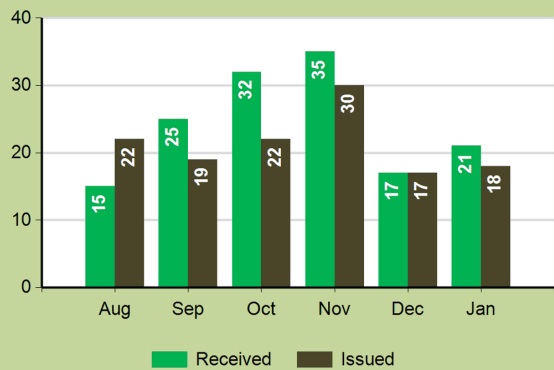


3.2 # BAEs Approved and declined

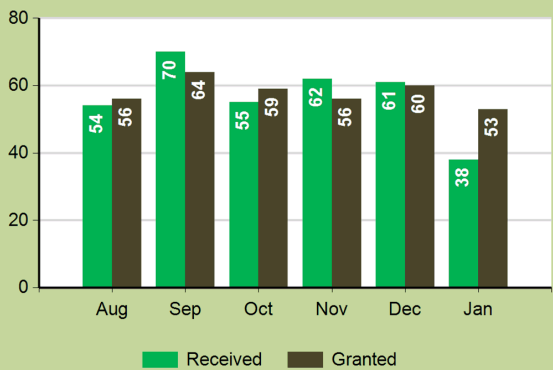


Certificate of Public Use (CPU), PIMs and LIMs

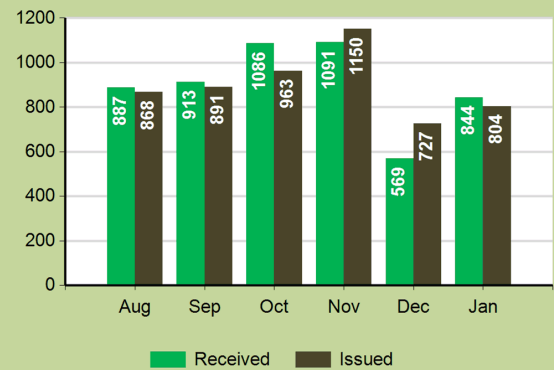
4.1 # CPUs received and issued



4.2 # PIM only received and granted



4.3 # LIMS Received and issued



4.4 PIMs % within 20 working days

PIM only 100% within 20 working days  
Combined BC/PIM/Development check 100% within 20 working days

4.5 LIMs issued % within 10 working days

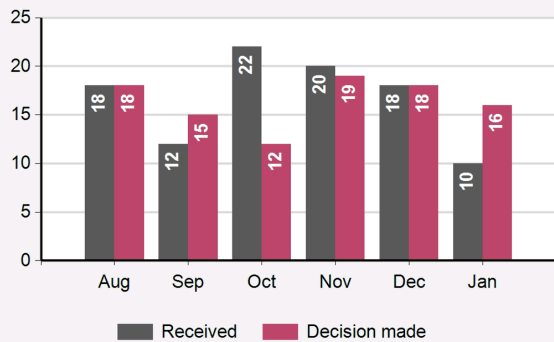
LIMs 100% within 10 working days

5.1 % Pre application meeting minutes issued within KPI

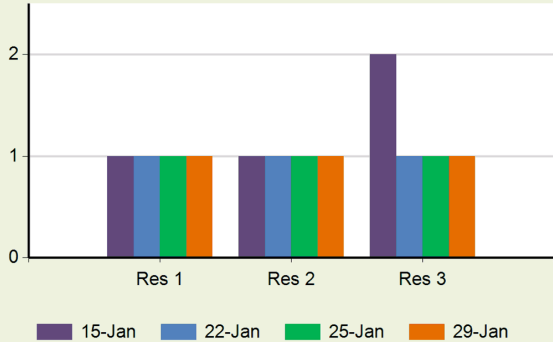
96% of pre application meeting records within KPI  
Level of Service: 94%. 6 of the 33 meetings were unknown.

Inspections

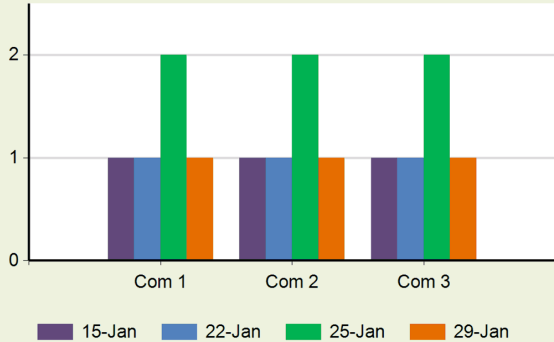
6.1 Certificate of acceptance (COA) received and decision made



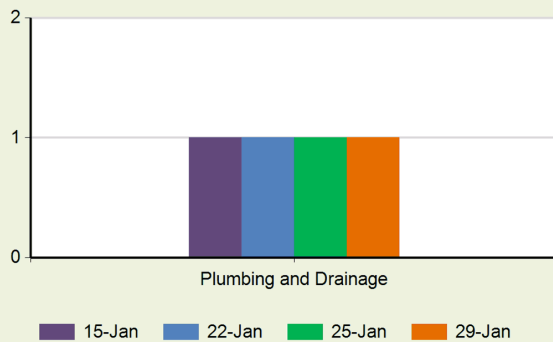
7.1 Inspection waiting times (days) residential (3 day KPI)



7.2 Inspection waiting times (days) commercial (3 day KPI)



7.3 Inspection waiting times (days) plumbing and drainage (3 day KPI)

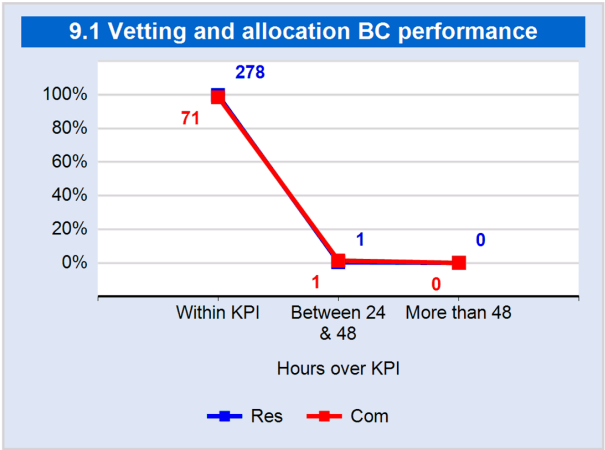
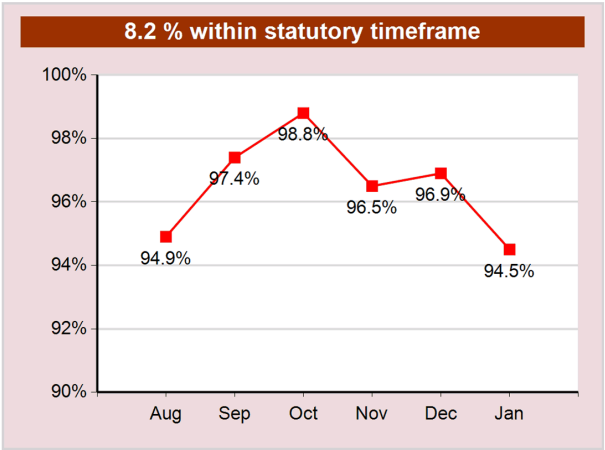
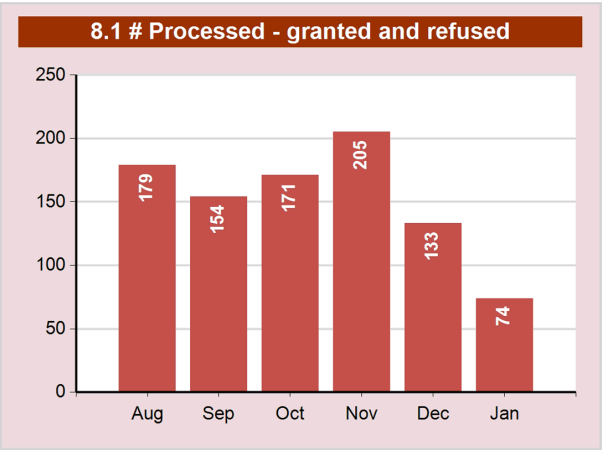
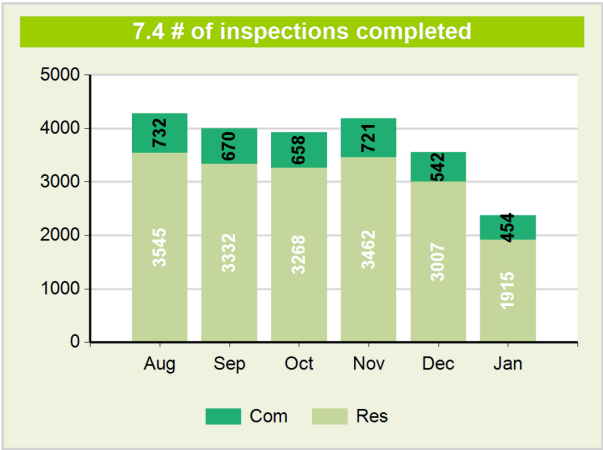




024 Monthly Report    Consenting & Compliance Group    Six months ending January 2018

Com - Commercial complexity    Res - Residential complexity

External BCA Performance



**10.1 Internal KPI**

95% processed within 19 days		
	Current Month	Current Financial YTD
BC Processed	95.5%	96.1%
CC Certificate Decisions	98.6%	99.4%

95% of inspections booked within 3 days of requested date		
	Current Month	Current Financial YTD
Inspections	99.9%	99.8%

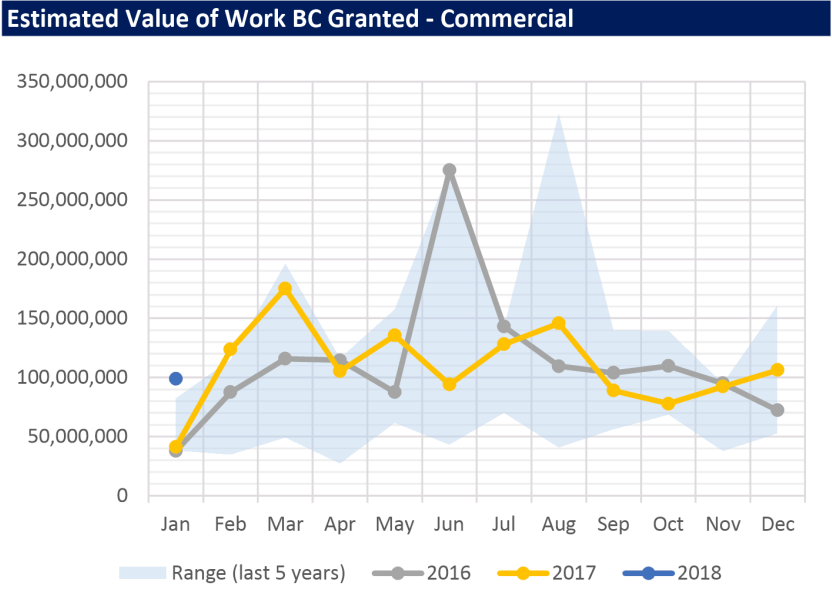
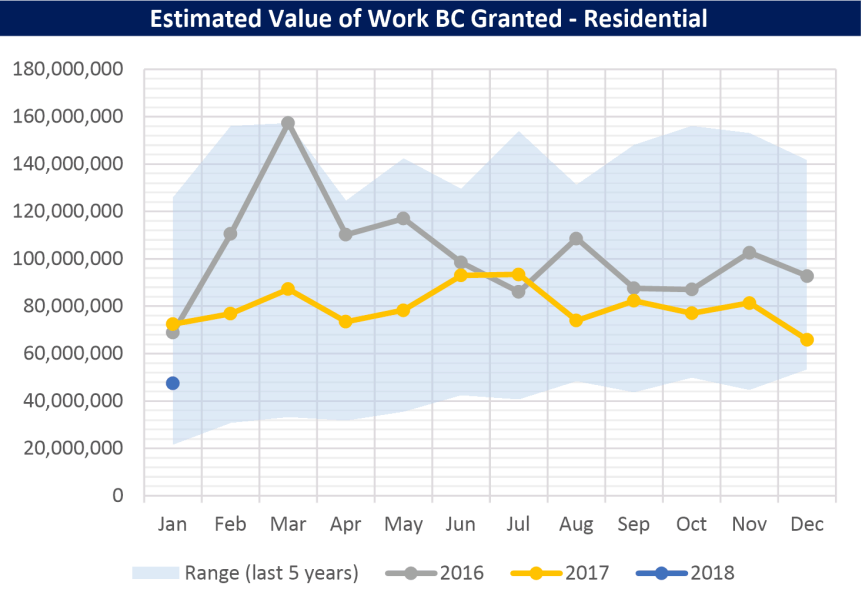
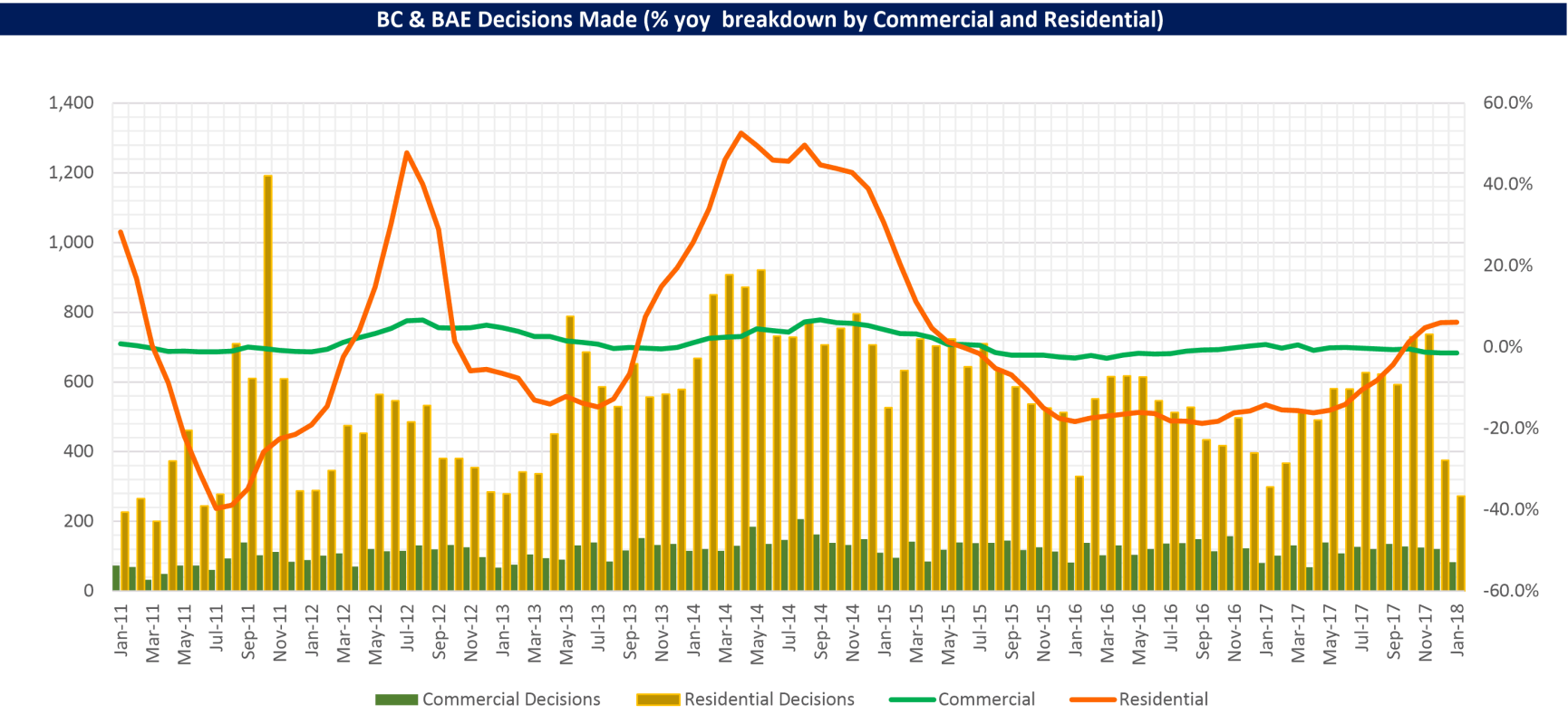
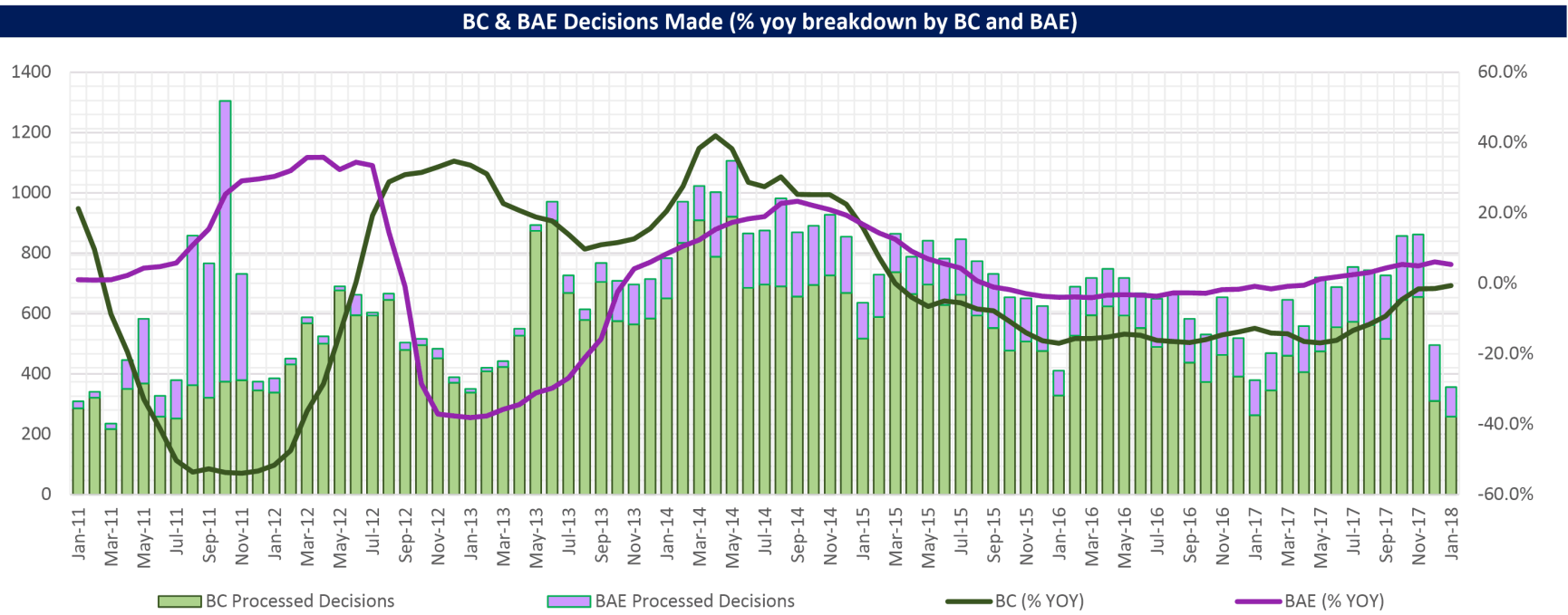


Monthly Councillors Report - Building Consenting

Report date: Jan-2018

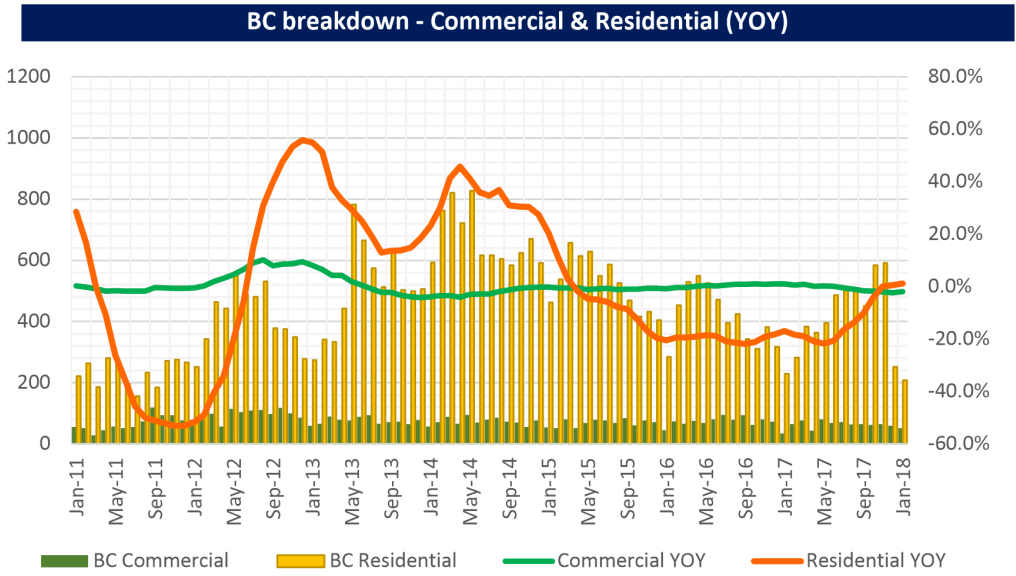
Excludes all amendments. Commercial and Residential classification are in accordance to complexity levels with exceptions to BAE.

Building Trends



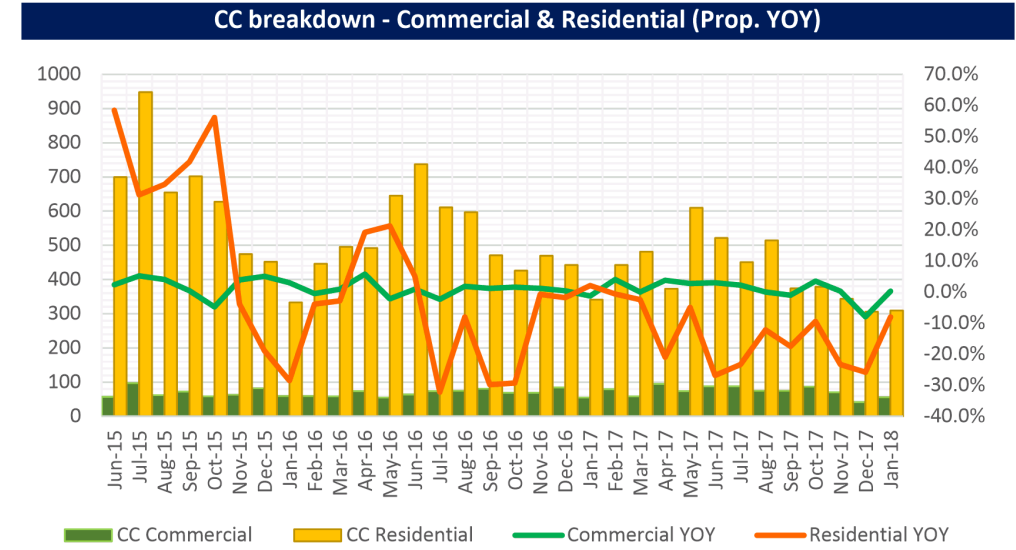
Building Consent Decisions (BC)

	Nominal			
	2015	2016	2017	2018
Jan	517	329	263	259
Feb	589	527	346	
Mar	738	595	460	
Apr	665	624	406	
May	697	594	475	
Jun	629	552	555	
Jul	663	490	573	
Aug	594	503	562	
Sep	553	437	516	
Oct	477	373	646	
Nov	508	463	655	
Dec	476	391	310	
Total	7,106	5,878	5,767	259



Code Compliance Certificate (CCC) Decisions (S95 Refusal & Issued)

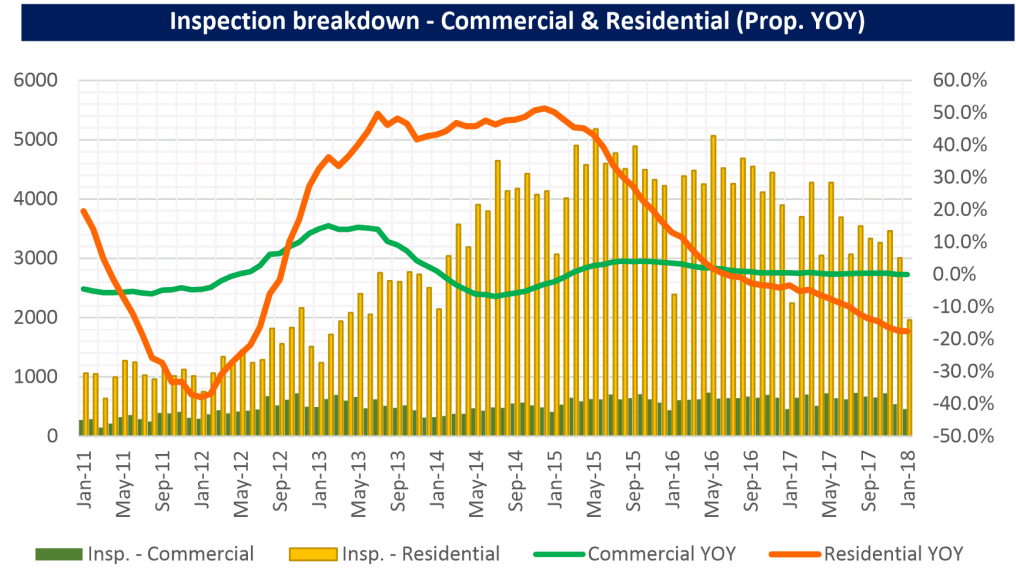
	Nominal			
	2015	2016	2017	2018
Jan	528	393	396	365
Feb	530	505	522	
Mar	564	554	539	
Apr	453	566	468	
May	588	700	684	
Jun	756	801	610	
Jul	1,046	684	539	
Aug	717	672	590	
Sep	774	552	449	
Oct	685	495	465	
Nov	538	539	414	
Dec	534	526	348	
Total	7,713	6,987	6,024	365



\*Due to system changes, code compliance decisions are only accurately accounted for as of mid 2013

Inspections

	Nominal			
	2015	2016	2017	2018
Jan	3,482	2,825	2,700	2,416
Feb	4,546	4,996	4,347	
Mar	5,555	5,100	4,983	
Apr	5,163	4,870	3,564	
May	5,811	5,804	5,001	
Jun	5,220	5,154	4,332	
Jul	5,478	4,900	3,692	
Aug	5,134	5,325	4,277	
Sep	5,536	5,220	4,002	
Oct	5,202	4,763	3,926	
Nov	4,947	5,139	4,183	
Dec	4,794	4,544	3,549	
Total	60,868	58,640	48,556	2,416



## 12 Resource Consents Monthly Report - January 2018

Reference: 18/172422

Contact: John Higgins john.higgins@ccc.govt.nz

941 8224

### 1. Purpose and Origin of Report

- 1.1 The purpose of this report is to provide a monthly update to the Regulatory Performance Committee with respect to the delivery of resource consent functions. This report covers activity for the month of January 2018.
- 1.2 **Attachment A** provides graphical information relating to application numbers and performance. Key aspects of that graphical information are also discussed below.
- 1.3 **Attachment B** provides a table of key applications.
- 1.4 The author will be present at the committee meeting to highlight key areas of the report and answer any questions.

### 2. Recommendation

[That Regulatory Performance Committee:](#)

1. [Receive the information in this report.](#)

### 3. Application Numbers

- 3.1 Applications received decreased from 252 in December to 194 in January. The decrease is seasonal and reflects what is normally seen in the month of January.
- 3.2 Application numbers continue to track below the previous year. The difference is approximately 15-20 per cent.
- 3.3 No temporary accommodation applications and 29 District Plan certificates were issued in January.

### 4. Performance

- 4.1 96 per cent of applications in January were processed within the statutory timeframe. This is below the target of 99% but still relatively high compliance with the statutory timeframe.
- 4.2 Complexity of applications remain high as staff still see more complex applications being lodged as well as they continue to become more familiar with the new District Plan and recent Resource Management Act amendments.

### 5. List of Significant Applications

- 5.1 A list of significant applications received and issued is included at Attachment B.

## Attachments

No.	Title	Page
A <a href="#">↓</a>	Attachment A - Key statistics - January 2018	77
B <a href="#">↓</a>	Attachment B - List of key applications - January 2018	85

## Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

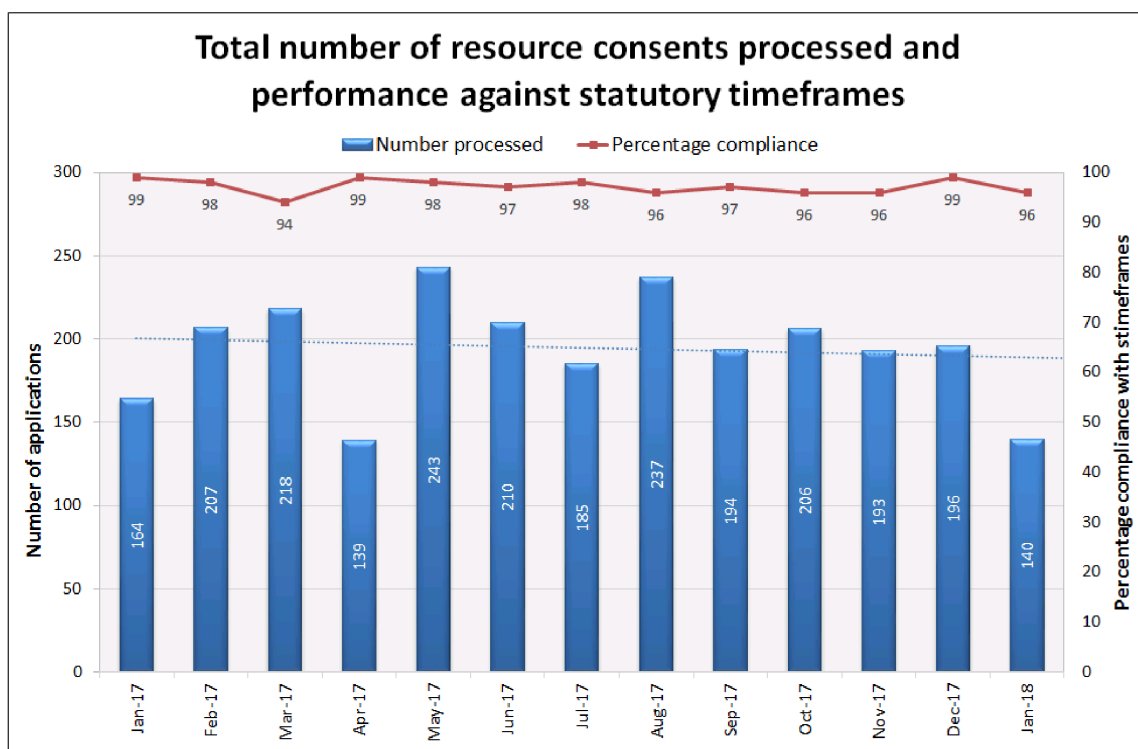
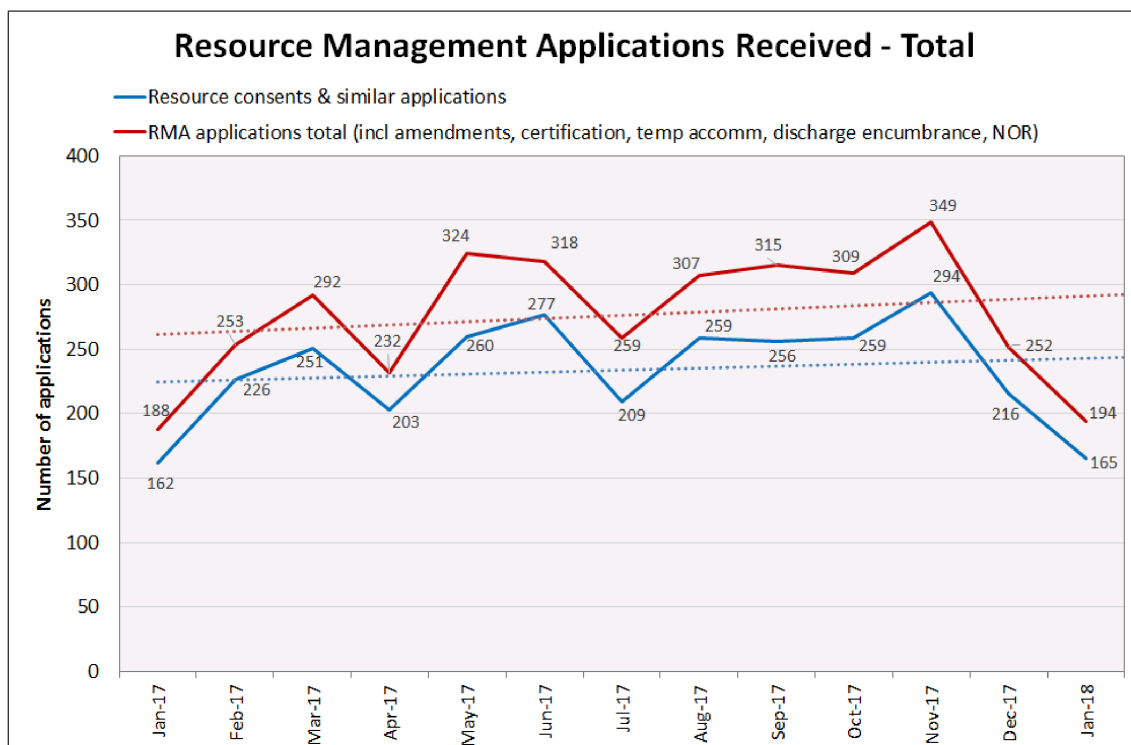
(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

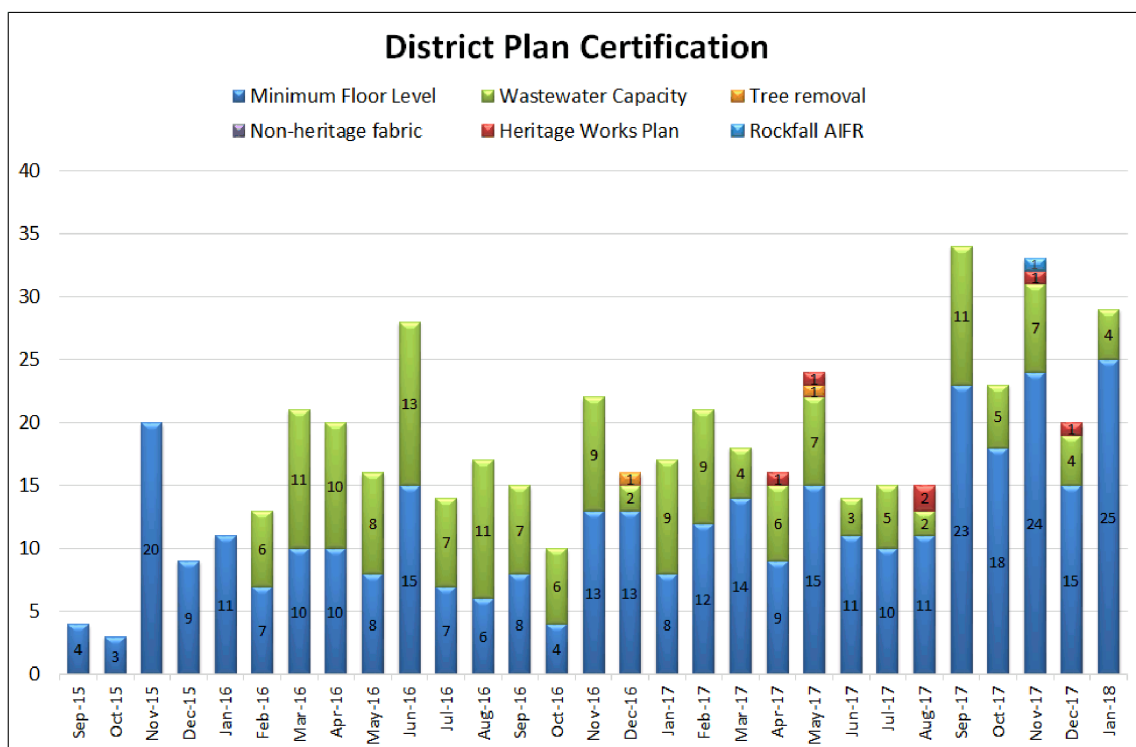
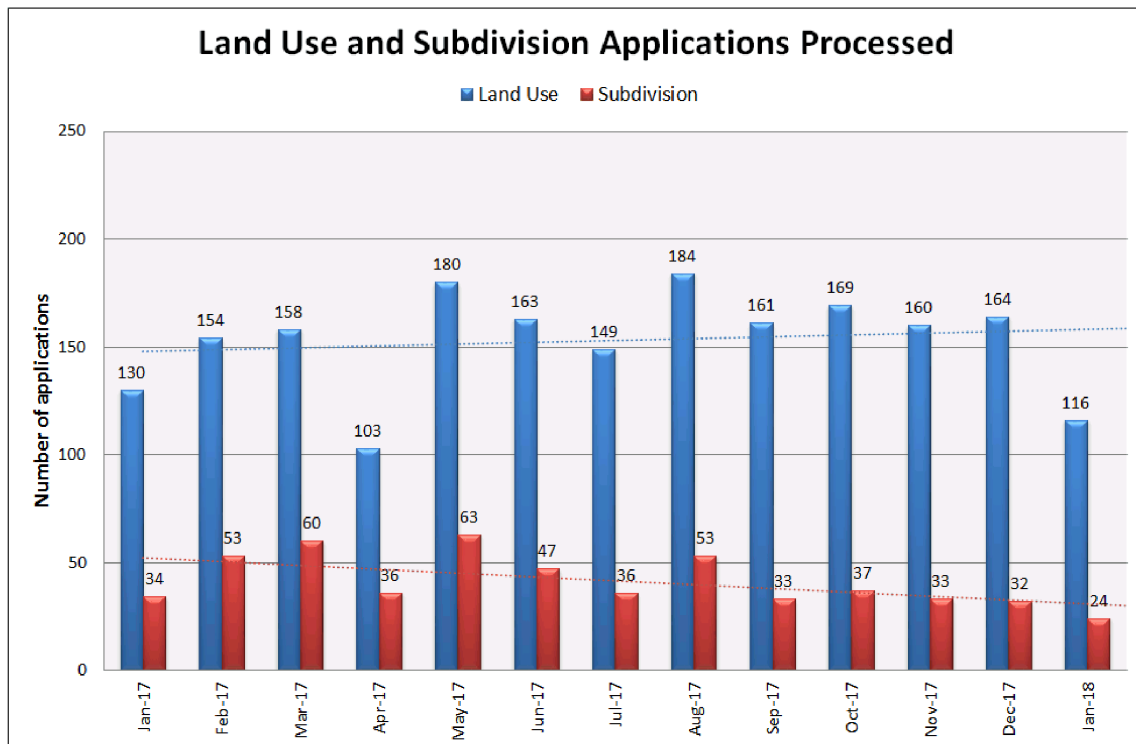
(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

## Signatories

<b>Author</b>	John Higgins - Acting Head of Legal Services
<b>Approved By</b>	Leonie Rae - General Manager Consenting and Compliance

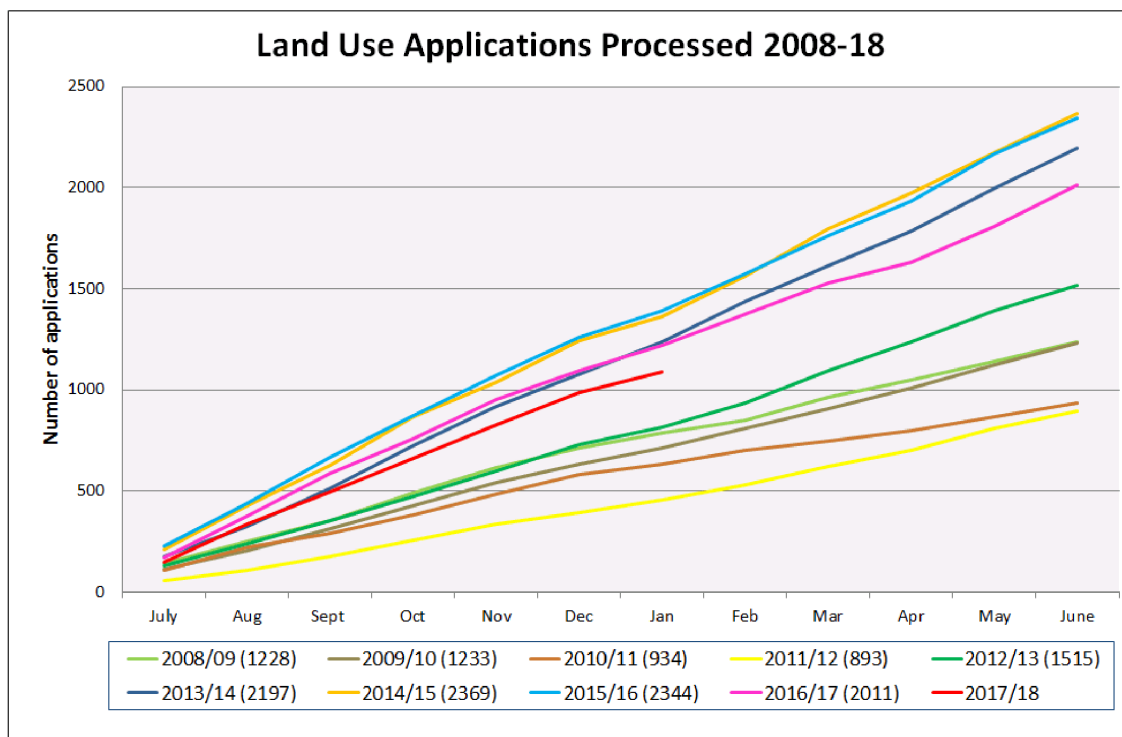
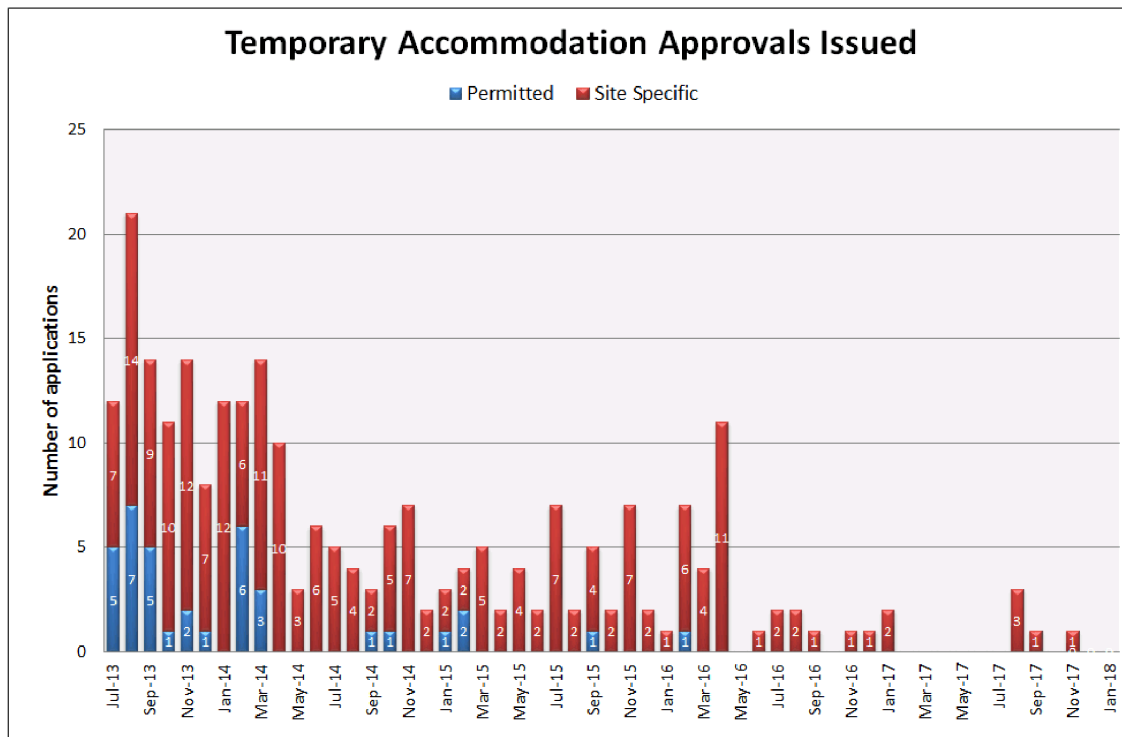


HPRM 13/1137232

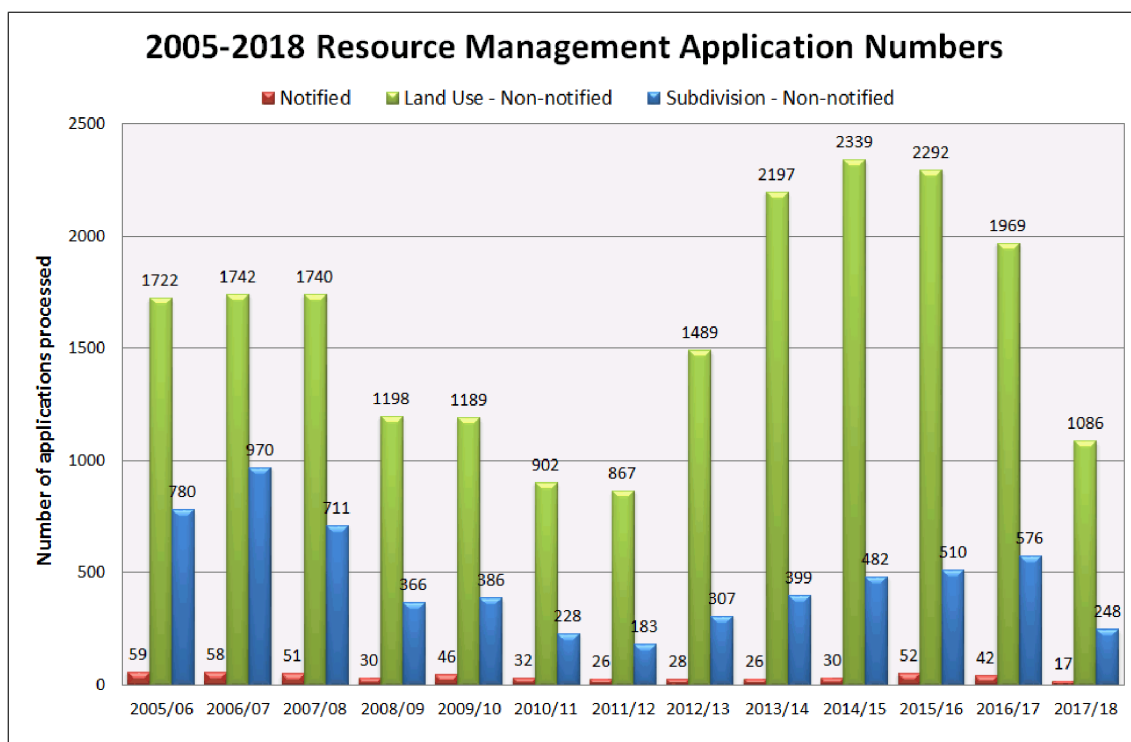
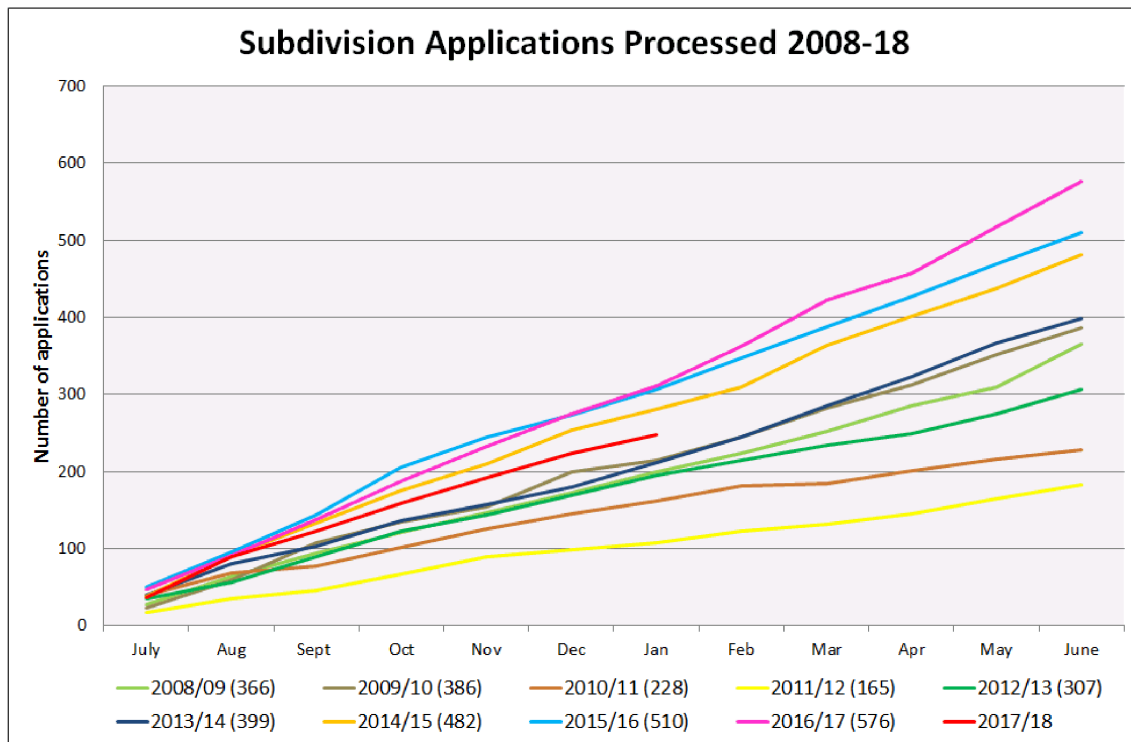


HPRM 13/1137232

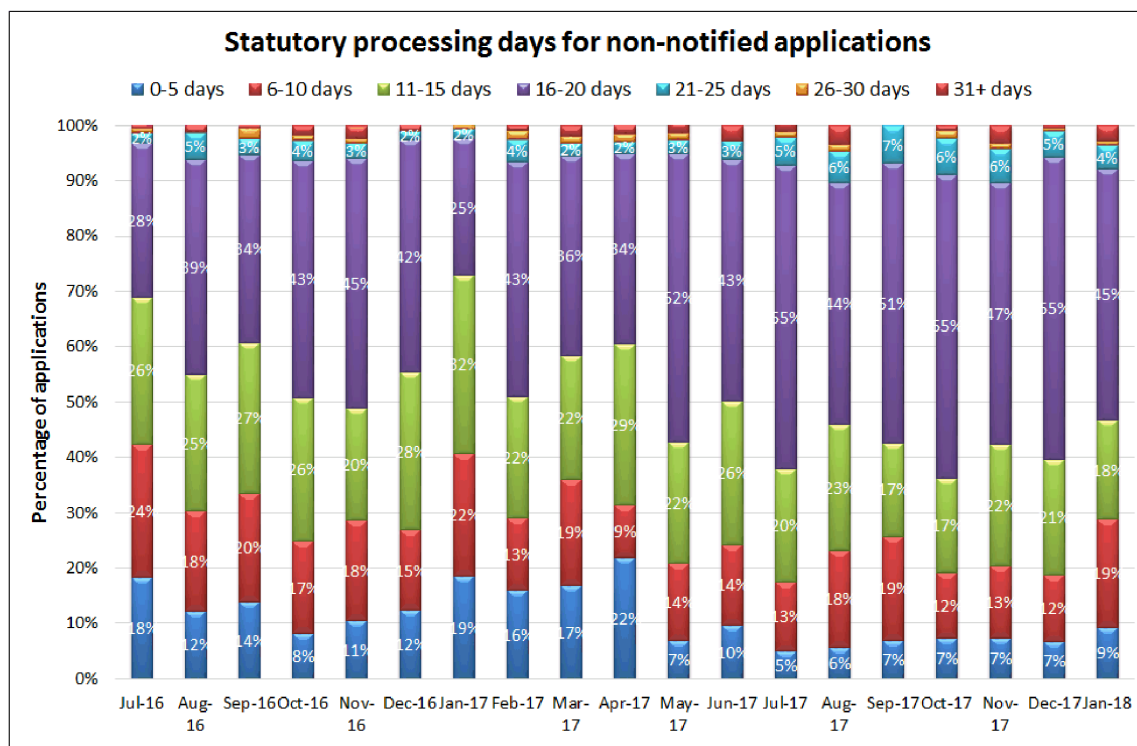
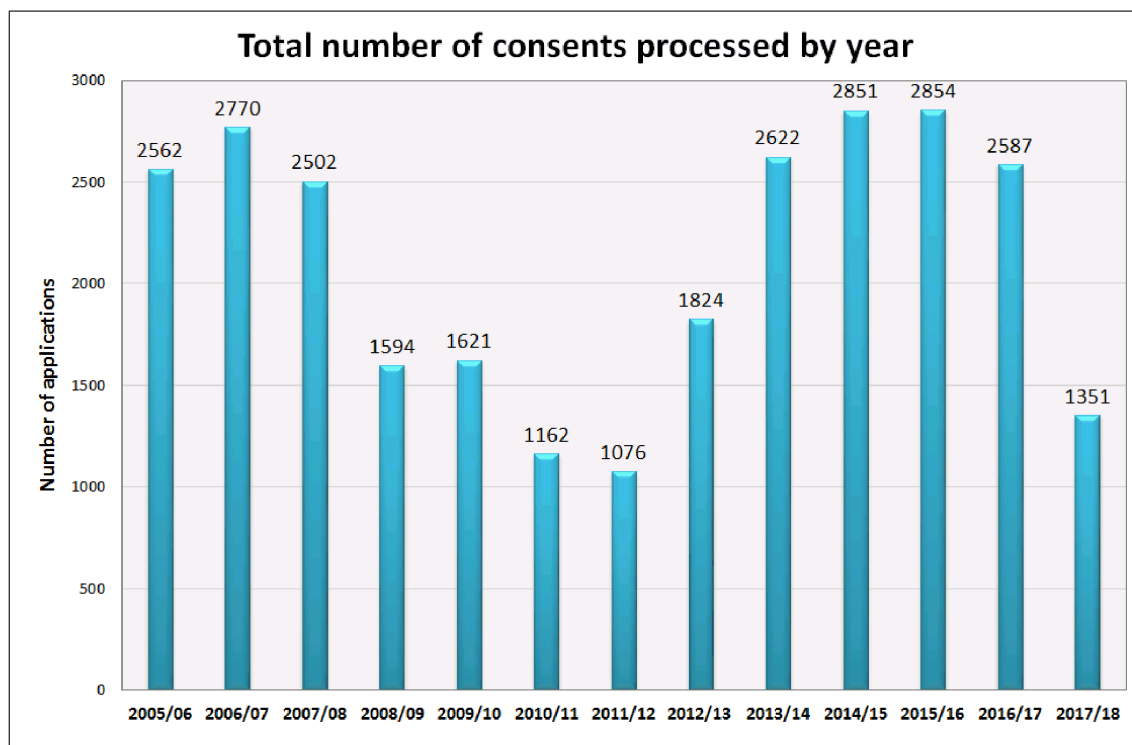




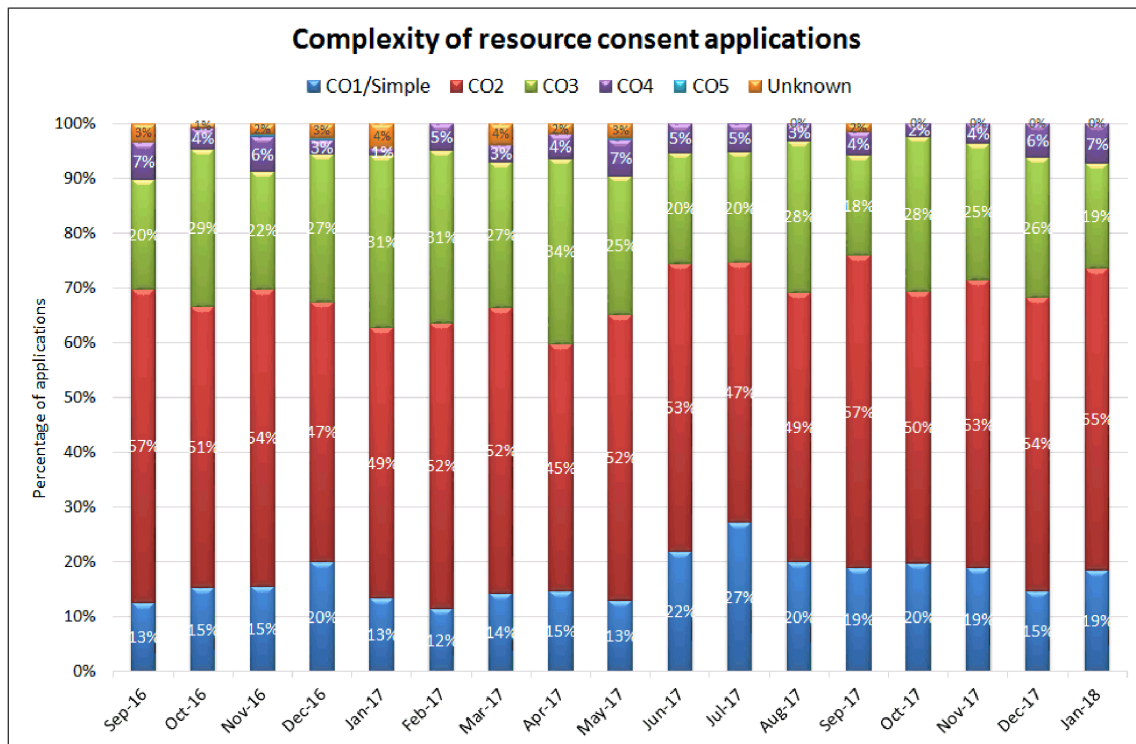
HPRM 13/1137232



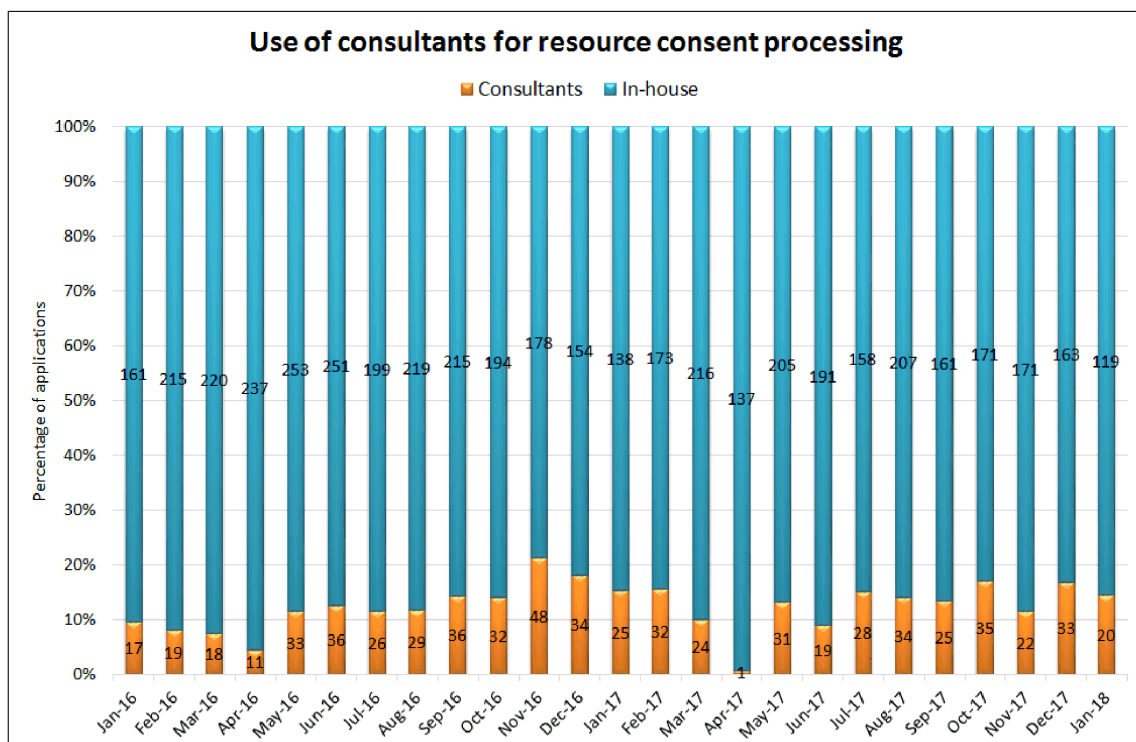
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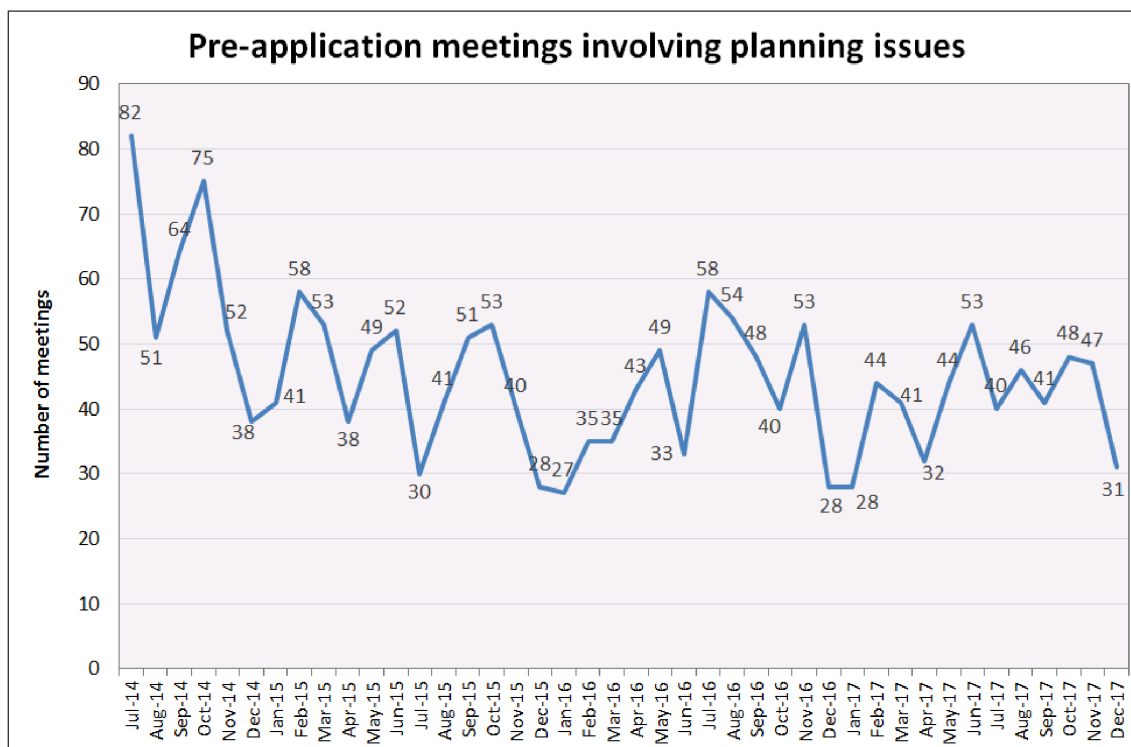
HPRM 13/1137232



Note: Complexity was not recorded until September 2016



HPRM 13/1137232



HPRM 13/1137232

## Totals

### 2016/17 = 2011

2011 land use applications – 50\* exceeded the statutory timeframe  
576 subdivision applications – 9 exceeded the statutory timeframe

\* 13 of these were associated with the introduction of the Connect system. Specifically, a system “bug” relating to incorrect counting of days when there are overlapping holds, and some user error in putting applications on hold while staff became familiar with how to use the new system.

### 2015/16 = 2854

2344 land use applications – 20 exceeded the statutory timeframe  
510 subdivision applications – 3 exceeded the statutory timeframe

### 2014/15 = 2851

2385 land use applications – 19 exceeded the statutory timeframe  
482 subdivision applications – 3 exceeded the statutory timeframe

Processed	2013/14	2014/15	2015/16	2016/17
Land Use (incl EUC, NOR, CoC, outline plans/waivers)	2223	2369	2344	2011
Subdivision	399	482	510	576
<b>Total resource consents &amp; NOR</b>	<b>2622</b>	<b>2851</b>	<b>2854</b>	<b>2857</b>
Notified resource consents & NOR	26	30	52	48
Temporary Accommodation - Permitted	30	5	2	0
Temporary Accommodation - Site specific	107	42	47	9
s.223 certificates	187	199	230	450
s.224 certificates (incl s.223/224 combined up to 2015/16)	287	339	422	456
Received	2013/14	2014/15	2015/16	2016/17
Land Use consents (excl NOR)	2472	2796	2686	2377
Subdivision consents	403	514	544	636
NOR	12	33	7	7
<b>Total resource consents &amp; NOR</b>	<b>2887</b>	<b>3343</b>	<b>3237</b>	<b>3017</b>
s.357 objections	16	12	10	32
Within scope amendments	67	100	124	193
<b>Temporary accommodation</b>	<b>169</b>	<b>70</b>	<b>71</b>	<b>24</b>
Notice of surrender	4	1	2	6
District Plan certification			145	217
s.88 incomplete applications returned	33	33	52	64
Withdrawn	24	44	44	47

HPRM 13/1137232

**APPEAL**

[RMA/2017/104](#) 211 Ryans Road Yaldhurst Concrete Pump Hire (Marty's) Retrospective consent to establish and operate a concrete pumping vehicle depot

**RECEIVED**

Application Number	Status	Address	Description	Applicant	Application Type	Received Date	Ward
<a href="#">RMA/2018/214</a>	Processing	440 Colombo Street Sydenham	Certificate of Compliance - Establish new church	UCKG Help Centre	COC	31/01/2018	Central
<a href="#">RMA/2018/165</a>	Awaiting payment	169 Pages Road Wainoni	Replace existing Consent for a Liquor Store and to add a Fruit and Vegetable Shop	Three Angels Holdings (2010) Limited	LUC	25/01/2018	Burwood
<a href="#">RMA/2018/105</a>	Processing	269 Cashel Street Central City	Set up a Commercial Sex Establishment	Jiaquing Dong	COC	17/01/2018	Central
<a href="#">RMA/2018/81</a>	Processing	55 Deans Avenue Riccarton	Undertake a mixed use development of 128 units	Fanyun Chiu	LUC	15/01/2018	Riccarton
<a href="#">RMA/2018/27</a>	Processing	26 Miners Road Yaldhurst	Vehicle movements associated with quarrying activity of up to 900 vehicles per day	Fulton Hogan Limited	LUC	8/01/2018	Hornby
<a href="#">RMA/2018/28</a>	Processing	319 Pound Road Templeton	Vehicle movements associated with quarrying activity of up to 1,800 vehicles per day	Fulton Hogan Ltd - Canterbury	LUC	8/01/2018	Hornby

**ISSUED**

No applications of interest this month