

Riccarton Bush Amendment Bill

Local Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Riccarton Bush Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to modernise and update the governance arrangements of the Riccarton Bush Trustees, who manage Riccarton House and Bush, a heritage site in Christchurch. The bill would define the trustees' functions more precisely, provide for the continuation of its work, and improve its finance and administration arrangements.

This commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

Commencement and financial plan

We recommend amending clauses 2(1) and 23(7) by extending the date on which clause 16 would come into force, and the date by which the first financial plan must be prepared, from 1 July 2013 to

1 July 2015. The bill was drafted before the Canterbury earthquakes and so does not take into account the fact that, under the Canterbury Earthquake (Local Government Act 2002) Order (No 2) 2011, the Christchurch City Council's next long-term plan will be prepared in 2015. The amendments we propose would align the bill with the Order in Council.

We also recommend amendments to clause 23 to provide for the event that the council does not approve the board's draft financial plan.

Leases and licences

We recommend amending clause 21 so that the terms of any lease or licence granted by the board must reflect the protection and conservation responsibilities with which the board has been charged, and the public's right of access.

Consolidation of legislation

Governance of the board of trustees and the management of Riccarton Bush are currently determined by three different Acts—the Riccarton Bush Act 1914, the Riccarton Bush Amendment Act 1947, and the Riccarton Bush Amendment Act 1949. The bill seeks to amend all these Acts and enact a fourth piece of legislation to update the governance and management arrangements for the board.

We considered whether this approach would further complicate the reading of the legislation regarding Riccarton Bush and its governance. While we believe there is merit in consolidating the legislation, such amendments would be outside the scope of this bill. Standing Order 288(2) states that a committee may not recommend an amendment to a local bill that is outside the scope of the notices advertising the intention to introduce or promote the bill. Even though the proposed amendments would not change the intent of the bill, the scope of the bill is overlaid by the notice requirements the Standing Orders impose on the promoter of the bill.

The notice given by the Christchurch City Council was that the purpose of the Riccarton Bush Amendment Bill was to only amend the Riccarton Bush Amendment Act 1914, the Riccarton Bush Amendment Act 1947, and the Riccarton Bush Amendment Act 1949. To consolidate the legislation would require the repeal of these Acts. The promoter would need to withdraw this bill and take steps to intro-

duce a new bill to consolidate the Riccarton Bush legislation into a single Act by the repeal of the existing legislation.

We are also mindful of the promoter's wishes. In the explanatory note to the bill, the promoter considered the option of a complete rewrite of the legislation, but instead chose to pursue legislative change in the form set out in this bill. It is understood that the main reasons for doing so were to preserve the continuity and legislative history of the original Act.

While we have decided to progress this bill in its current form, we would support a future review of the Riccarton Bush legislation to simplify the reading of it and to make clear its provisions.

Appendix

Committee process

The Riccarton Bush Amendment Bill was referred to the committee on 13 June 2012. The closing date for submissions was 26 July 2012. We received and considered two submissions from interested groups. We heard two submissions at a hearing in Christchurch. We received advice from the Department of Internal Affairs.

Committee membership

Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams

Riccarton Bush Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Gerry Brownlee

Riccarton Bush Amendment Bill

Local Bill

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Schedule

New Schedule 2 added to Riccarton Bush Act 1914

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Riccarton Bush Amendment Act **2012**.

2 Commencement

- (1) **Section 16** comes into force on 1 July ~~2013~~ 2015. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Amendments to Riccarton Bush Act 1914****3 Principal Act amended**

This Part amends the Riccarton Bush Act 1914. 10

4 New sections 4 and 4A substituted

Section 4 is repealed and the following sections are substituted:

“4 Terms of office of members of Board

- “(1) A member of the Board appointed under **section 5(2)(a)** of the Riccarton Bush Amendment Act 1947 who is not an elected member of the council or a community board (as defined in section 5 of the Local Government Act 2002) holds office for 3 years. 20
- “(2) A member of the Board appointed under **section 5(2)(a)** of the Riccarton Bush Amendment Act 1947 who is an elected member of the council or a community board (as defined in section 5 of the Local Government Act 2002) holds office for the shorter of the following periods: 25
- “**(a)** 3 years:
- “**(b)** the period during which he or she is an elected member of the council or community board.
- “(3) A member of the Board appointed under **section 5(2)(b)** of the Riccarton Bush Amendment Act 1947 holds office for the shorter of the following periods: 30
- “**(a)** 3 years:

- “(b) the period during which he or she is an elected member of the community board.
- “(4) A member of the Board appointed under **section 5(3) or (4)** of the Riccarton Bush Amendment Act 1947 holds office for 5 years. 5
- “(5) A member of the Board appointed under **section 5(5)** of the Riccarton Bush Amendment Act 1947 holds office for the period that the Board specifies when it appoints the member.
- “(6) The terms of office of members of the Board stated in this section are subject to the provisions in **section 4A(2) and (3)** stating when members of the Board vacate office. 10
- “**4A When Board members come into office and vacate office**
- “(1) A member of the Board comes into office on the date of his or her appointment.
- “(2) A member of the Board vacates office,— 15
- “(a) in the case of a member of the Board appointed under **section 5(2)(a)** of the Riccarton Bush Amendment Act 1947 who is not an elected member of the council or a community board (as defined in section 5 of the Local Government Act 2002), when his or her successor is 20 appointed:
- “(b) in the case of a member of the Board appointed under **section 5(2)(a)** of the Riccarton Bush Amendment Act 1947 who is an elected member of the council or a 25 community board (as defined in section 5 of the Local Government Act 2002), on the earlier of the following events:
- “(i) his or her successor is appointed:
- “(ii) he or she ceases to be an elected member of the council or community board: 30
- “(c) in the case of a member of the Board appointed under **section 5(2)(b)** of the Riccarton Bush Amendment Act 1947, on the earlier of the following events:
- “(i) his or her successor is appointed:
- “(ii) he or she ceases to be an elected member of the 35 community board:
- “(d) in the case of a member of the Board appointed under any of **section 5(3) to (5)** of the Riccarton Bush

Amendment Act 1947, when his or her successor is appointed.

“(3) A member of the Board may vacate his or her office at any time before the time provided in **subsection (2)**.”

5 New sections 10A to 10C inserted 5

The following sections are inserted after section 10:

“10A Functions of Board

The functions of the Board are to—

- “(a) appoint a chief executive officer:
- “(b) reappoint or replace a chief executive officer: 10
- “(c) specify the functions of the chief executive officer:
- “(d) establish broad lines of policy consistent with this Act (and amendments) for the guidance of the chief executive officer:
- “(e) ensure that the Board’s assets are maintained in good order and condition: 15
- “(f) ensure that the Riccarton Bush is run effectively and efficiently.

“10B Powers relating to committees

- “(1) The Board may appoint 1 or more committees to advise it on any of its functions. The Board may also discharge a committee or alter a committee’s membership. 20
- “(2) The Board may carry out an action described in **subsection (1)** from time to time but must do so by resolution.
- “(3) A person may be appointed to be a member of a committee despite not being a member of the Board. 25
- “(4) A committee may regulate its own procedure, except that it must comply with directions that the Board gives it.
- “(5) The quorum at a meeting of a committee is 2 members.

“10C Delegation of functions and powers 30

- “(1) The Board may delegate any of its functions or powers, except—
- “(a) the power of delegation in this section:
- “(b) the functions in **section 10A**:
- “(c) the powers in **section 10B**: 35

- “(d) the functions in **sections 23 and 26**:
“(e) the power in **section 28(2)**:
“(f) the functions in sections 66 and 67 and Schedule 8 of the Local Government Act 2002 (which are applied to the Board by **section 24** of this Act): 5
“(g) the powers in **section 10A** of the Riccarton Bush Amendment Act 1947.
- “(2) The Board may delegate a function or power from time to time, and either generally or specifically, but must do so by resolution. 10
- “(3) The Board may delegate a function or power only to—
“(a) the chief executive officer appointed under **section 10A**; or
“(b) a committee appointed under **section 10B**.
- “(4) The chief executive officer or a committee to which a delegation is made may perform the function or exercise the power in the same manner and with the same effect as if the function or power had been conferred by this section and not by delegation, except that the performance or exercise is subject to general or special directions that the Board gives or conditions that the Board imposes. 15 20
- “(5) A chief executive officer or committee purporting to act in accordance with a delegation is presumed to be doing so in the absence of proof to the contrary.
- “(6) A delegation does not prevent the Board from performing the delegated function or exercising the delegated power. 25
- “(7) A delegation is revocable at will.
- “(8) A delegation continues in force according to its tenor until it is revoked.”
- 6 New section 11 substituted** 30
Section 11 is repealed and the following section substituted:
- “11 Common seal**
The fixing of the common seal of the Board to a document is valid only if—
“(a) the Board has made a resolution to do so; and 35
“(b) 2 members of the Board are present when the seal is fixed.”

7 New section 14 substituted

Section 14 is repealed and the following section substituted:

“14 Public entry to and conduct in Riccarton property

“(1) This section applies to the Riccarton Bush, Riccarton House and the grounds around it, and Deans Cottage and the grounds around it (**Riccarton property**). 5

“(2) Members of the public may enter the Riccarton property at the times the Board allows and without paying a fee.

“(3) Members of the public who have entered the Riccarton property must— 10

“(a) comply with restrictions or conditions that the Board imposes; and

“(b) pay fees that the Board sets for matters other than entry.”

8 Powers of Board

Section 15(4) is repealed and the following subsection substituted: 15

“(4) The powers of the Board are not affected by a vacancy in its membership.”

9 Penalty

Section 19 is amended by omitting “twenty pounds” and substituting “\$1,000”. 20

10 New heading and sections 21 to 28 substituted

Section 21 is repealed and the following heading and sections are substituted:

“Financial plans, statements of intent, and management plans” 25

“21 Definitions for sections 22 to 27

In **sections 22 to 27**,—

“**council** means the Christchurch City Council

“**financial plan** means a financial plan that complies with **section 22** 30

“**financial year** means a period of 12 months ending on 30 June

“**management plan** means a management plan that complies with **section 25**

“**Riccarton property** means the Riccarton Bush, Riccarton House and the grounds around it, and Deans Cottage and the grounds around it. 5

“22 Requirements for financial plan

“(1) A financial plan must—

“(a) cover a period of at least 10 consecutive financial years; and

“(b) set out the Board’s proposed annual operating budget (including revenue and expenditure) for each of the first 3 years of the 10-year period that it covers; and 10

“(c) set out the Board’s proposed annual capital expenditure budget for each of the 10 years of the 10-year period that it covers; and 15

“(d) provide for integrated decision-making and the co-ordination of the Board’s resources; and

“(e) contribute to the accountability of the Board and the council to the community; and

“(f) contribute to the council’s ability to comply with its planning obligations. 20

“(2) A financial plan must—

“(a) be prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993; and 25

“(b) contain information that the council reasonably considers to be appropriate; and

“(c) be in the form that the council reasonably considers to be appropriate.

“23 Council approval of financial plan 30

“(1) The Board must adopt a draft financial plan in the year immediately before the commencement of the first financial year that the plan covers.

“(2) The Board must deliver the draft financial plan to the council before— 35

- “(a) 1 November in the year immediately before the commencement of the first financial year that the plan covers; or
- “(b) another date that the council reasonably determines.
- “(3) The council may approve the draft financial plan. 5
- “(3A) If the council does not approve the draft financial plan—
- “(a) the council must provide its reasons for not doing so to the Board; and
- “(b) the Board must, within 90 days after receiving those reasons, deliver a revised draft financial plan to the council. 10
- “(4) If the council approves the draft financial plan or revised draft financial plan (as the case may be), the plan—
- “(a) becomes the final plan; and
- “(b) comes into force on 1 July of the first financial year that it covers and continues in force until the end of the third consecutive financial year that it covers. 15
- “(5) A final financial plan—
- “(a) is a statement by the Board of its intentions about the matters covered by the plan; and
- “(b) is not a decision by the Board to act on any specific matter covered by the plan; and 20
- “(c) does not entitle any person to require the Board to implement the plan.
- “(6) The Board and the council may agree to amend the financial plan at any time. 25
- “(7) The first financial plan must be prepared for the financial year commencing on 1 July ~~2013~~ 2015.
- “**24 Statement of intent**
- Sections 65, 66, and 67 and Schedule 8 of the Local Government Act 2002 apply to the Board and the council as if— 30
- “(a) references to the shareholders or any of the shareholders were references to the council:
- “(b) the reference in clause 1(c) of Schedule 8 to directors were a reference to Board members.
- “**25 Requirements for management plan** 35
- A management plan must—

- “(a) ensure the protection and conservation of the flora and fauna in the Riccarton Bush; and
- “(b) ensure the protection and conservation of Riccarton House and the grounds around it and Deans Cottage and the grounds around it; and 5
- “(c) ensure appropriate use, enjoyment, and development of the Riccarton property; and
- “(d) comply with the trusts specified in **section 2** of the Riccarton Bush Amendment Act 1947.
- “**26 Board making and amendment of management plan** 10
- “(1) The Board must prepare a draft management plan.
- “(2) The Board must provide a copy of the draft management plan to—
- “(a) the council; and
- “(b) the Royal Society of New Zealand Canterbury Branch Incorporated; and 15
- “(c) the New Zealand Historic Places Trust.
- “(3) The Board must make the draft management plan available for inspection free of charge during ordinary office hours at the Board’s office. 20
- “(4) The Board must place a public notice in a newspaper circulating in the area in which the Riccarton property is situated—
- “(a) stating that the draft management plan is available for inspection free of charge during ordinary office hours at the Board’s office; and 25
- “(b) inviting submissions on the draft management plan before a specified date.
- “(5) The Board must place the notice at least twice on different days.
- “(6) The Board must give every person who makes a submission and who indicates a wish to be heard in support of his, her, or its submission a reasonable opportunity of appearing before the Board in support of the submission. 30
- “(7) The Board must adopt a management plan within 5 years after the commencement of the Riccarton Bush Amendment Act 35
2012.

- “(8) The Board must keep the management plan under continuous review and amend it to meet changed circumstances or to reflect increased knowledge.
- “(9) The Board must comply with **subsections (2) to (6)** if it proposes to make material amendments to the management plan. 5
- “**27 Status of management plan**
The Board must comply with the management plan when performing its functions or exercising its powers.
- “**28 Additional land** 10
- “(1) The land described in **Schedule 2** vests in the Board on the date of commencement of the Riccarton Bush Amendment Act **2012**.
- “(2) The Board may acquire any other land or interest in land on the terms that the Board thinks fit. 15
- “(3) In relation to land or an interest acquired under **subsection (2)**, the Board—
- “(a) must hold it on the same trusts as the Board holds the Riccarton Bush; and
- “(b) must administer it in accordance with this Act (and amendments) as if it were part of the Riccarton Bush; and 20
- “(c) may use it for the planting, cultivation, and conservation of trees, shrubs, and plants whether indigenous to New Zealand or not. 25
- “(4) Any reference in this Act (or amendments) to ‘Riccarton Bush’ includes land vested in, or acquired by, the Board under this section, unless it is inconsistent with the context to read the reference in this way.”
- 11 New Schedule 2 added** 30
The principal Act is amended by adding the **Schedule 2** set out in the **Schedule** of this Act.

Part 2
Amendments to Riccarton Bush
Amendment Act 1947

- 12 Principal Act amended** 5
This Part amends the Riccarton Bush Amendment Act 1947.
- 13 New section 2 substituted**
Section 2 is repealed and the following section substituted:
- “2 Declaration of trust**
- “(1) The land described in Schedule 1 is vested in the Board on trust to keep and manage for the purposes of— 10
- “(a) planting, cultivating, and conserving trees, plants, and shrubs indigenous to New Zealand; and
- “(b) public use and enjoyment for the purposes of health, instruction, and recreation.
- “(2) The land described in Schedule 2, and the land described in **Schedule 2** of the Riccarton Bush Act 1914, is vested in the Board on trust to keep and manage for the purposes of— 15
- “(a) planting, cultivating, and conserving trees, plants, and shrubs whether indigenous to New Zealand or not; and
- “(b) public use and enjoyment for the purposes of health, instruction, and recreation; and 20
- “(c) restoring, maintaining, and conserving Riccarton House and the grounds around it and Deans Cottage and the grounds around it.”
- 14 New sections 5 and 5A substituted** 25
Section 5 is repealed and the following sections are substituted:
- “5 Constitution of Board**
- “(1) The members of the Board are appointed as described in this section. 30
- “(2) The Christchurch City Council must appoint 5 members, as follows:
- “(a) 3 must be persons whom the council decides to appoint:
- “(b) 2 must be elected members of a community board, as defined in section 5 of the Local Government Act 2002, 35
for either of the following communities:

- “(i) the community in which the Riccarton Bush is situated; or
- “(ii) a community immediately adjacent to that in which the Riccarton Bush is situated.
- “(3) The family of John Deans must appoint 2 members by nominating them under section 9 of the Riccarton Bush Act 1914. 5
- “(4) The Royal Society of New Zealand Canterbury Branch Incorporated must appoint 1 member.
- “(5) The Board may appoint 1 member.
- “5A Transitional provision on constitution of Board 10**
- “(1) In this section,—
- “**commencement date** means the commencement date described in **section 2(2)** of the Riccarton Bush Amendment Act **2012**
- “**implementation date** means the date 6 months after the commencement date. 15
- “(2) Members of the Board at the commencement date cease to hold office at the end of the day before the implementation date.
- “(3) The terms of office of the first members appointed under **section 5** begin on the implementation date.” 20
- 15 Power to purchase certain lands**
- The proviso to section 7(3) is repealed.
- 16 New heading and sections 10 to 10B substituted**
- Section 10 is repealed and the following heading and sections are substituted: 25
- “Council payments to Board*
- “10 Definitions for sections 10A and 10B**
- In **sections 10A and 10B**,—
- “**council** means the Christchurch City Council 30
- “**financial year** means a period of 12 months ending on 30 June
- “**plan** means a financial plan in force under **section 23(4)** of the Riccarton Bush Act 1914.

“10A Amount and timing of payments

“(1) The Board may require the council to pay the Board in each financial year the amount that the plan specifies that the council must pay the Board in the year for the Board’s operating budget. 5

“(2) However, the council may adjust the amount of the payment if the Board indicates that it intends to depart significantly from the plan or the council’s opinion is that the Board has departed significantly from the plan. The council must consult with the Board before adjusting the amount. 10

“(3) The council must pay the amount under **subsection (1) or (2)** to the Board by 12 equal monthly instalments in advance. The first instalment for the financial year must be paid on 1 July and each subsequent instalment must be paid on the first day of the month. 15

“(4) If a plan makes provision for the council to contribute to capital expenditure by the Board, the council’s contribution must be paid to the Board at the time that the Board and the council agree.

“10B Payments only as in plan

The council is not liable to pay any amount to the Board, under **section 10A** or otherwise, unless provision for the amount is made in a plan.” 20

17 Section 15 repealed

Section 15 is repealed. 25

18 New section 16 substituted

Section 16 is repealed and the following section substituted:

“16 Members of Board and committees not personally liable

“(1) No member of the Board is personally liable for an act ~~or omission of~~ done or omitted to be done by the Board, a member of the Board, or a member of a committee of the Board ~~done or not done~~ if the act is done or omitted to be done in good faith in the course of the operations of the Board or the committee. 30

“(2) No member of a committee of the Board is personally liable for an act ~~or omission of~~ done or omitted to be done by the 35

committee or a member of the committee ~~done or not done~~ if the act is done or omitted to be done in good faith in the course of the operations of the Board or the committee.

“(3) **Subsections (1) and (2)** are subject to sections 44 to 46 of the Local Government Act 2002, which apply as if the Board were a local authority.” 5

19 Powers of Board

Section 19(h) is amended by omitting “a secretary and treasurer, and”.

Part 3

10

**Amendment to Riccarton Bush
Amendment Act 1949**

20 Principal Act amended

This Part amends the Riccarton Bush Amendment Act 1949.

21 New section 2 substituted

15

Section 2 is repealed and the following section substituted:

“2 Power to lease or grant licence over Riccarton property

“(1) The Riccarton Bush Trustees may lease, or grant a licence over, all or a part of the Riccarton Bush, Riccarton House, the grounds around Riccarton House, Deans Cottage, or the grounds around Deans Cottage on the terms and conditions that the trustees think fit. 20

“(1A) The terms and conditions of a lease or licence granted under **subsection (1)** must ensure that nothing is done under the lease or licence that would be inconsistent with the management plan prepared by the Board under **section 26** of the Riccarton Bush Act 1914. 25

“(2) ~~**Subsection (1)**~~ **Subsections (1) and (1A)** apply despite anything to the contrary in any other enactment.”

Schedule**s 11****New Schedule 2 added to Riccarton Bush
Act 1914****Schedule 2****s 28**

3339 m² being Lot 1 on Deposited Plan 13668 and being the land
comprised in computer freehold register CB511/172

5

Legislative history

30 May 2012

Introduction (Bill 28–1)

13 June 2012

First reading and referral to Local Government and
Environment Committee
