

10. AMENDMENT OF THE CHRISTCHURCH CITY COUNCIL TRAFFIC & PARKING BYLAW 2008

General Manager responsible:	General Manager City Environment, Jane Parfitt; DDI 941 8608, and General Manager Regulation and Democracy Services, Peter Mitchell, DDI 941 8549
Officer responsible:	Transport and Greenspace, Alan Beuzenberg, Legal Services, Chris Gilbert
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PURPOSE OF REPORT

1. To recommend to the Regulatory and Planning Committee to seek the Council's approval to commence a statutory special consultative procedure for the amendment of the Christchurch City Council Traffic & Parking Bylaw 2008 and to appoint a hearings panel to consider the submissions.

EXECUTIVE SUMMARY

2. The Christchurch City Council Traffic & Parking Bylaw 2008 (the Bylaw) was adopted on 19 June 2008 and came into force on 1 July 2008. At the time it was adopted, it was acknowledged that the two schedules of the bylaw (one way streets and special vehicle lanes) included errors that needed to be checked and fixed (the roads which are not clear are identified in the second table in each schedule of the Bylaw). The Council's resolutions on 19 June included: *"Direct staff to undertake an urgent review of the schedules to the Traffic and Parking Bylaw to ensure that they are up to date and correct, including any additions."*
3. This proposal is primarily for the purposes of making amendments to the first and second schedules of the Bylaw to ensure they are up to date and correct (following the review). The proposal also adds other one way streets and special vehicle lanes (cycle lanes and bus lanes) that currently exist and/or have previously been consulted on by the Council, although not using the special consultative procedure. The second table of the first schedule has been removed as it has been confirmed that these streets are currently not one way streets. The format for the second schedule has changed to make it easier to read and has removed streets which were not strictly special vehicles lanes, but related to turning restrictions.
4. In relation to the cycle lanes on roads in Christchurch which are not included in the special vehicle lane schedule of the Bylaw, consultation would have been carried out before these cycle lanes were marked out on the road. However, prior to February 2005 cycle lanes were not recognised as a special vehicle lane in the various transport legislation. It has only been since the Land Transport Rules came into force in February 2005 that "cycle lanes" have been included in the definition of "special vehicle lane".
5. Under the Council's bylaw making powers in the Transport Act 1962, a special vehicle lane can only be created by specifying the road on which the lane is on in a bylaw. To ensure that cycle lanes already marked out on roads around the city can be enforced, these existing cycle lanes need to be specified in the Bylaw, by inclusion in the second schedule of the Bylaw, and following a special consultative procedure for making amendments to the Bylaw.
6. There are also some bus lanes (and cycle lanes), and a one way street, which have been consulted on more recently, and in some cases approved by the Council (but may not yet be marked out), but they were not consulted on under a special consultative procedure for the purpose of an amendment to the Bylaw. It was not clear to the relevant staff at the time that a special consultative procedure was required, and that a resolution could not simply be made by Council, which is what the 1991 Bylaw specified. These roads also need to be added to the Bylaw schedules and included in this special consultative procedure proposal.
7. There are also two minor errors in the Bylaw, relating to an amendment to clause 11 to clarify that the penalty if the offence goes to court is \$500, and a minor change to the reference to "parking provisions", and to amend clause 14(b) to include words which were inadvertently left out. These matters could probably be amended by using section 156(2) of the Local Government Act 2002 (which provides that editorial changes and amendments of minor effect may be made by ordinary resolution publicly notified). However, as this special consultative procedure is being carried out to amend the Bylaw it is appropriate to also include these matters in the consultation proposal, so that there is no argument in the future as to their amendment.

8. **Attachment A** is a statement of proposal (including the draft Amendment Bylaw and the proposed new Schedules (and a marked up version of the **Attachment B** First Schedule, so the changes are clear)) and **Attachment C** is a summary of information, as required under the Local Government Act 2002, both for formal approval by the Council.
9. The process for making the amendments is as follows:
 - The Regulatory and Planning Committee recommends to the Council that it should resolve that the Amendment Bylaw is the most appropriate way to address the perceived problems, it is in the most appropriate form, and that there are no inconsistencies with the New Zealand Bill of Rights Act (See recommendations below);
 - The Council approves the statement of proposal and summary of information and publicises it for public submissions, and appoints a hearings panel to hear submissions (See recommendations below);
 - The special consultative procedure will be from 10 November 2008 to 11 December 2008;
 - If any submitters wish to be heard the hearings will take place during early February 2009; and
 - The Council will then receive a report from the hearings panel to consider the recommendations of the panel, and adopt the Amendment Bylaw, and the amendments will become part of the 2008 Bylaw.

FINANCIAL IMPLICATIONS

10. The financial implication in this instance is the cost of running the special consultative procedure. However, if the consultation did not take place the existing special vehicle lanes and one way streets that are not included in the bylaw could not be enforced and the Council may lose some revenue it might otherwise collect.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

11. Not affected by the proposed changes.

LEGAL CONSIDERATIONS/SECTION 155 OF THE LOCAL GOVERNMENT ACT 2002

12. Section 155 of the Act requires the Council to determine whether the making or amending of a bylaw is *"the most appropriate way to address the perceived problem"*. The Council is also required to determine whether the bylaw is in the most appropriate form and that there are no inconsistencies with the New Zealand Bill of Rights Act 1990 (NZBORA).

Appropriate way to address problem

13. The Council has previously determined that a bylaw is necessary to create one way streets and special vehicle lanes (which address the problems of traffic flow and safety for cyclists in the district) and it approved the continuation of the previous bylaw schedules when it adopted the Bylaw on 19 June 2008 (subject to the errors in those schedules being reviewed). This process now proposes amended schedules, based on the original streets included in the Bylaw schedules, and adds various bus and cycle lanes to the schedules which have previously been consulted on by the Council but were not consulted on using the special consultative procedure. Some cycle lanes were marked on roads in the city before they were even recognised in the Land Transport Rules as a "special vehicle lane" in those rules (the rules came into force on 27 February 2005).
14. At that time the Council did not need to include them in the special vehicle lanes schedule of the former bylaw. If the Council wants the existing lanes to be enforced by the Council and the Police then it must ratify them through this process of adding them to the Bylaw. (In the future, any cycle lanes, bus lanes, or other special vehicle lanes or one way streets that are proposed will be consulted on using the special consultative procedure from the start of the process.)

15. There does not appear to be an alternative option to address these issues, other than to use the powers provided for in the transport legislation. The Council cannot simply erect signs or mark out cycle lanes under the Land Transport Rules, without a power provided for in an Act or a bylaw first.

Appropriate form of bylaw

16. The form in which the proposed schedules of the Bylaw have been drafted, and the minor Bylaw amendments, is considered appropriate. The level of detail that should be provided in the wording for the schedules has been carefully considered. It is recommended that the bylaw wording only specify the road where the special vehicle lane will be, and the approximate location in the road. This approach is supported by section 334(2) of the Local Government Act 1974, case law, and on analysis of the form of other Councils' bylaws.
17. Section 334(2) states: "*For the purposes of any resolution or bylaw of the council, anything constructed or provided under the authority of the council shall be deemed to be sufficiently described if the road in which it is constructed or provided and its approximate locality in that road are specified in the bylaw or resolution.*" It is not clear whether this provision only applies to section 334(1) (which relates to the erection of monuments, etc, and provision of facilities on roads) or to **any** resolution or bylaw of the Council relating to roads, including those made under the Transport Act 1962. There does not appear to be any case law on the wording in section 334(2), but the principle is relevant to special vehicle lane wording.
18. If a greater level of detail were specified then if any changes were made to the road in the future, which required the alteration of the special vehicle lane, then each time that happened, the bylaw would need to be amended. There have been numerous judgments stating that for a bylaw to be valid, it must be 'certain', which means it must contain adequate information so that people know what they have to do to obey the bylaw.
19. On one hand, specific detail in a bylaw may make the bylaw completely certain. However, in relation to identifying special vehicle lanes, if what is ultimately marked on the road does not agree with the written description in the bylaw, then that will result in uncertainty, and may provide a loophole to anyone in an enforcement situation. There will be a need, as time goes on and other features of the road change (eg kerb and channelling), to change the cycle lane – this may mean it no longer meets an exact written description in a bylaw, but in these cases its general location on the road is still the same. For this reason, a more general description in the bylaw coupled with the marking on the road is believed to provide the best certainty for the bylaw, and for enforcement of the bylaw.
20. Once the Council has made the decision to have a special vehicle lane on a road, the Traffic Control Devices Rule specifies how the Council must then mark the lane and, in some cases, install signs, and where the signs must be placed (this is already recognised in clause 13 of the bylaw by stating the clause is subject to the erection of the prescribed signs). One of the purposes stated in the Traffic Control Devices Rule is that it is to ensure that Road Controlling Authorities have regard to safe practice in the design and installation of traffic control devices. The markings used, and types of symbols etc are not things which it would appear elected members can have any influence over, or the public should be submitting on, under a special consultative procedure. The Council's role is to make the decision as to which roads a special vehicle lane should be on, its general locality on the road, and also to decide whether it should be a 24 hour special vehicle lane or not (all of these matters will also be guided to some extent by traffic engineering principles).
21. It is proposed to include in the bylaw schedule a statement that "The exact location of any road or traffic lane restricted to specific classes of vehicles, for example, special vehicle lanes, will be marked and signed as prescribed by the Land Transport Traffic Control Devices Rule 2004 (or any other applicable legislation) and, where they are not prescribed, will be decided by traffic engineering staff applying best practice guidelines". This appropriately and reasonably leaves the discretion for these matters up to staff, and makes it clear how the bylaw and the resulting markings on the road are linked.

22. The only provision of the NZBORA which has a bearing on the amendment to this bylaw is section 18, which provides that everyone lawfully in New Zealand has the right to freedom of movement. Creating one way streets and special vehicle lanes provide a limitation on this right, but are considered to be reasonable restrictions in a free and democratic society, in accordance with section 5 of the NZBORA. Persons can still move around the city, and in fact creating cycle lanes in particular may uphold another indirect right under the NZBORA: freedom from discrimination (cycle lanes may provide a safe option for those who cannot drive cars because of a disability or age). Therefore there are no inconsistencies between the draft amended bylaw and the NZBORA.

Legal requirements of a special consultative procedure

23. The special consultative procedure under the Act requires that the Council prepare a statement of proposal that must include:
- “(a) as the case may be,—
- (i) a draft of the bylaw as proposed to be made or amended; or
 - (ii) a statement that the bylaw is to be revoked; and
 - (iii) the reasons for the proposal; and
 - (iv) a report on any relevant determinations by the local authority under section 155.”
24. The Act also requires the Council to determine the form of the summary of information. Section 89(c) requires that it be distributed "*as widely as reasonably practicable (in such a manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates)...*" Section 83(e) of the Act also requires that the Council must give public notice of the proposal and the consultation being undertaken.
25. Due to the fact that the proposed Amendment Bylaw deal with roads throughout the Christchurch City Council district, it is proposed that the summary of information be published through the local newspaper/s, and that this also serve as public notice of the proposal, as required under section 83(e). Copies of the consultation documents will be available from the Civic Offices, and all Council service centres and libraries.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

26. Yes.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

27. Yes.

ALIGNMENT WITH STRATEGIES

28. This proposal aligns with both the Metro Strategy 2006-2012 and Cycling Strategy.

CONSULTATION FULFILMENT

29. Internal consultation has taken place between relevant units. The statutory special consultative procedure will follow the adoption of the recommendations of this report.

STAFF RECOMMENDATION

It is recommended that the Committee recommend to Council that it:

:

- (a) Resolve that the draft Christchurch City Council Traffic & Parking Amendment Bylaw 2009 is the most appropriate way to provide for one-way streets, and special vehicle lanes (which address traffic flow and safety for cyclists in the district), and that the minor amendments to clauses 11 and 14 of the Bylaw are necessary for clarity.
- (b) Resolve that there are no inconsistencies between the draft Christchurch City Council Traffic and Parking Amendment Bylaw 2009 and the New Zealand Bill of Rights Act 1990, and that the draft Amendment Bylaw is in the most appropriate form.
- (c) Resolve that the attached Statement of Proposal (which includes the draft Amendment Bylaw) and the Summary of Information be adopted for consultation and made available for public inspection at all Council service centres, Council libraries and on the Council's website, and that the Summary of Information be published in a newspaper having a wide circulation in the Council's district.
- (d) Appoint a hearings panel to consider submissions.

BACKGROUND (THE ISSUES)

Schedules

30. During the Traffic and Parking Bylaw review, it was acknowledged that the two schedules of the bylaw (one way streets and special vehicle lanes) included errors that needed to be checked and fixed. Unfortunately, this was not able to be undertaken as part of the Bylaw review in 2008 as it was not included in the original consultation. Some of the errors that were identified in the existing First Schedule for the one way streets included the following:
 - Resolutions were made for a street to be one way but the subsequent intention was for it to be retained as a two way street, however, the resolution was never rescinded;
 - Incorrect street names were used to identify the one way street or the extent of the one way street;
 - Physical works were undertaken to alter the status of some one way streets however, the bylaw was not amended to remove the streets from the schedule.

31. The checking process for the schedule, carried out by a consultant on behalf of the Council, has involved:
 - Checking that the one way streets listed in the First Schedule are correct;
 - Amending any errors;
 - Ensuring that the schedule reflects what is on site on the road;
 - Obtaining information from Land Information New Zealand on the street names, to ensure the correct street name references are used.

32. As a result the second table to the First Schedule (which included the streets which, at the time of making the bylaw, did not appear to be one way streets) has been removed and various streets have been added to the First Schedule, as well as other minor amendments to the wording made. In addition, there is also a street which had been consulted on, and approved to be made into a one way street which is awaiting construction. It is recommended that this one way street be added to the Bylaw and consulted on further through this process. The relevant road and where in the process it is at, is as follows:
 - Hanmer Street in a northerly direction from Gilby Street to Avonside Drive – approved by Hagley/Ferrymead Community Board on 12 December 2007 to proceed to final design, tender and construction.

33. A similar check and review process has been carried out by the consultant for the Second Schedule regarding roads and traffic lanes restricted to specific classes of vehicles (special vehicle lanes). However, in order to ensure that the proposed Second Schedule contains adequate information on the locations of roads or traffic lanes which are restricted to specific classes of vehicles, and is easy to read, a table format has been chosen. The table allows easy identification of sections of roads which are restricted to a specific class of vehicles. It should be noted that the current Second Schedule lists some roads which are related to turning restrictions rather than special vehicle lanes. These have been removed from the proposed Second Schedule.

34. The new bus lanes which are to be added to the Second Schedule of the bylaw are on Papanui Road, Colombo Street (South) and Queenspark Road. These bus priority routes and bus lanes were recently approved by the Council on 15 May 2008 (for Papanui Road and Colombo Street) and 12 June 2008 (Queenspark).

35. Extensive consultation on these new bus lanes was carried out between 15 October 2007 and 21 December 2007. Approximately 10,000 generic brochures and 41,500 route specific brochures were printed and distributed to key stakeholders during the consultation period. A broad range of techniques and media were utilised during the course of the consultation. These included, seminars/workshops, static displays, advertising on billboards, buses, etc, and information was also provided through the Council's Customer Call Centre, web site, and Have Your Say. The Council received a total of 881 submissions on the three Bus Priority routes during the course of the consultation.
36. The cycle lanes which are being added to the schedule have been installed primarily over the last two decades with the majority having been installed in the last decade, following Councils commitment to consistently invest as part of its adoption of its first Cycle Strategy in 1996. The consultation undertaken prior to the installation of a cycle lane has been in line with the Council standards in consultation processes of the time. Over the years the consultation processes have continued to be developed with clearer communication, brochures and community input and clearer reporting paths that have improved to more consistently achieve the current best practices. The generic process used is documented within the 'Local Capital Project Development' flow chart and involves many stages where both community and Community Board input is gained before recommendations are made to the Council for resolution. Current practice has been in place several years prior to cycle lanes having a legal status in the Land Transport Rules (February 2005) and so the process and level of consultation has been very robust.
37. There are also some cycle lanes which have already been consulted on, prior to 1 July 2008 when the new bylaw came into effect, but are still going through the "approval" process. It is also recommended that these lanes be added to the bylaw at this stage, and consulted on further through this process, rather than as a separate special consultative procedure. The relevant roads and lanes, and where in the process they are at, are as follows:
- Hansons Lane - has been to the Riccarton/Wigram Community Board and the Council (now awaiting construction, which will not occur until this SCP is completed)
 - St Martins Road – has been to the Spreydon/Heathcote Community Board and was before the Council on 11 September 2008 (now awaiting construction, which will not occur until this SCP is completed)
 - Ensors Road (extension of St Martins Road – combined with that project) – has been to Spreydon/Heathcote Community Board and was before the Council on 11 September 2008 (now awaiting construction, which will not occur until this SCP is completed)
 - Harman Street – was before the Spreydon/Heathcote Community Board on 19 August 2008 and is going to the Council on 16 October 2008
 - Bridge Street – is going to the Burwood/Pegasus Community Board on 15 September 2008
 - Blighs Road (Idris Road - Wairakei Road) – is going to the Fendalton/Waimairi Community Board on 16 September 2008.

Other minor amendments

38. Clause 11 sets out the penalties for parking offences but requires amendment for clarification purposes. Following the making of the Bylaw it appeared that it was not clear from that clause alone what the maximum penalty was if the Council did not issue an infringement notice but prosecuted the matter by way of an information and summons. There was also some comment that the words "breaches any of the parking provisions" were not clear as to whether this included a breach of a Council resolution made under the Bylaw. While there is a strong argument that the maximum fine is \$500, it is recommended that new clause (1)(b) be inserted to remove any doubt as to the matter. Similarly, while the Bylaw was drafted using a plain English approach, it is recommended that new subclause (2) be inserted to remove any doubt as to what is meant by a "breach of any parking provisions".
39. Clause 14, dealing with turning restrictions also needs clarification. The proposal is to amend clause 14(1)(b) by inserting the words "are prohibited" after the words "classes of vehicles". While the meaning of subclause (1)(b) is largely clear when reading it together with subclause (1)(a), the insertion of the words "are prohibited" puts the meaning of the clause beyond doubt.

THE OBJECTIVES

40. To correct and update the first and second schedules of the Traffic and Parking Bylaw 2008, and make other minor amendments to the Bylaw by way of a special consultative procedure.

THE OPTIONS

41. The options for the Council are to either amend the bylaw or not (or possibly defer the amendment of the bylaw). If the Council did not make these amendments then it (and the Police) would only be able to enforce the one-way streets and special vehicle lanes that are in the first table of each schedule.

THE PREFERRED OPTION

42. Commence the special consultative procedure to make the recommended amendments to the Bylaw.