

5. LAND TRANSPORT (ROAD USER) AMENDMENT RULE 2009



General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Legal Services Unit Manager
Author:	Vivienne Wilson and Judith Cheyne

PURPOSE OF REPORT

1. The purpose of this report is to:
 - (a) Advise the Regulatory and Planning Committee on the amendments made to the Land Transport (Road User) Rule 2004 with respect to grass verges and berms
 - (b) Seek approval of the Committee to promote an amendment to the Christchurch City Council Traffic and Parking Bylaw 2008.

EXECUTIVE SUMMARY

2. On 1 November 2009 the most recent amendments to the Land Transport (Road User) Rule 2004 came into force. They include the revocation and replacement of clause 6.2 of the Rule. Clause 6.2 (1) now provides that a person must not stop, stand or park their vehicle on a roadway if the person can stop, stand or park on the road margin "*without damaging ornamental grass plots, shrubs, or flower beds laid out or planted on the margin*". However, subclause (1) does not apply if the Council has provided signs or markings, or made a bylaw, indicating that a different rule applies.
3. There will only be a breach of clause 6.2(1) where someone parks on the road margin, if the road margin has been planted as described, the plantings are damaged, and there are no signs or markings on the road or a bylaw that indicates any other rule applies. An infringement notice can be issued in respect of this offence with a fine of \$40.
4. Parking on a road margin that has not been planted as described, and/or where there is no damage to the plantings does not amount to an offence under clause 6.2(1).
5. Signs or markings "*indicating that a rule different from the one in subclause (1) applies*" could be parking signs and road markings that indicate parking on the roadway is allowed, although those signs/markings would not indicate any rules in relation to parking on the road margin. However, the Council has a bylaw which provides what is to happen on at least some planted road margins.
6. On 1 July 2008 the Council's Traffic and Parking Bylaw 2008 came into effect and clause 9 of that Bylaw provides that no person may stop, stand or park a motor vehicle on a grass berm or verge where prescribed signs indicate no stopping, standing or parking, as the case may be.
7. For the reasons outlined in the background section below the writers of this report believe that most of Council's grass berms and verges will come within the meaning of "*ornamental grass plots...laid out or planted on the margin*". The writers also consider that clause 9 of the Bylaw indicates that a different rule applies from that contained in clause 6.2(1) of the Road User Rule. Clause 9 of the Bylaw does not require that there be any damage to the grass berm or verge from the stopping standing or parking, and the Bylaw also requires that there be signs to indicate the no stopping/parking requirement.
8. To ensure that the Council can still issue infringement notices in any situation where the requirements of clause 6.2 are met, the Bylaw should be amended to provide that the Bylaw does not conflict with clause 6.2. This will make it clear that the Council would not be required to have signs erected in those situations.
9. The rest of clause 9 is still required so that the Council can provide for no stopping/parking signs in any situations which are not covered by clause 6.2, for example, where damage to the margin might not be caused by parking, but the Council wants to prevent people parking on the margin for other reasons (congestion, etc), or to cover grass berms or verges that are not laid out or planted as described (e.g. riverbanks, or self grown verges such as along QEII Drive or Halswell Road).

10. In order to amend clause 9 of the bylaw, a Special Consultative Procedure (SCP) is required. That consultation can be carried out at the same time as another SCP, if that is considered appropriate.

FINANCIAL IMPLICATIONS

11. There is a cost to Council in carrying out the SCP to amend the Bylaw. If the amendment to clause 9 is consulted on at the same time as another amendment to the Traffic and Parking Bylaw 2008, or another SCP, then that will reduce the costs for Council.
12. Another financial implication of the recommended option is that costs to Council of installing signage on some cultivated areas in the city to prevent parking that causes damage on those areas, will not now be necessary, leading to a saving for any applicable areas where it was contemplated signage would be installed. Signs will still be required in other areas.

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

13. The cost of the SCP will be included within existing budgets for such processes

LEGAL CONSIDERATIONS

14. Sections 83, 83A, 86 and 89 of the Local Government Act 2002 will be applicable if the recommended option, to amend the bylaw, is accepted and an SCP is to be carried out. Other legal considerations concern the provisions of the Road User Rule and the amendment to clause 6.2 which comes into force on 1 November 2009. Those provisions are discussed in full in the background section of this report.

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

15. Yes – see the background section of this report.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

16. Not applicable

ALIGNMENT WITH STRATEGIES

17. The Council's Parking Strategy 2003 includes the aim of minimising the impact of parking on the natural and physical environment and supporting the sustainable use of resources.

Do the recommendations align with the Council's strategies?

18. Yes the recommended option supports the above strategy.

CONSULTATION FULFILMENT

19. The options in this report, including the proposal to amend the Bylaw to cater for the Road User Rule amendment, have been discussed among staff in the Legal, Parking Enforcement and Network Operations teams. The community will be consulted with in relation to the proposed amendment to the Bylaw through the SCP process.

STAFF RECOMMENDATION

That the Regulatory and Planning Committee recommend to the Council that it:

- (a) Note the information provided in this report regarding the amendment to the Road User Rule and its potential effect in relation to the Council's Traffic and Parking Bylaw 2008.
- (b) Instruct staff to prepare the necessary documents for a special consultative procedure to amend clause 9 of the Traffic and Parking Bylaw 2008, and bring the matter to a Council agenda so that the consultation will be able to take place concurrently with another appropriate special consultative procedure.

BACKGROUND (THE ISSUES)

Christchurch City Council Traffic and Parking Bylaw 2008

20. On 1 July 2008, the Christchurch City Council Traffic and Parking Bylaw 2008 came into force. Clause 9(1) of the Bylaw provides that no person may stop, stand or park a motor vehicle on a grass berm or verge where prescribed signs indicate no stopping, standing or parking, as the case may be. Contravention of this clause, where signs have been erected, allows an infringement notice to be issued and an infringement fee as set out in Schedule 2 of the Transport Act 1962 applies (currently \$40).
21. In the Bylaw, a grass berm is defined as the area behind a kerb which is laid out in grass and may include a riverbank area. A grass verge is defined as the area of road, which is laid out in grass:
 - (a) Between the carriageway and a kerb; or
 - (b) Adjacent to the carriageway where there is no kerb and which may include a riverbank area.
22. A prescribed sign means any applicable traffic control device (such as a traffic sign or road marking) referred to in the Land Transport Rule: Traffic Control Devices 2004.
23. Clause 9(1) was drafted in this way because of sections 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004.

Traffic Control Devices Rule and Road User Rule

24. Sections 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004 provide that a road controlling authority must install regulatory signs to draw attention to a requirement, restriction or prohibition on road users when that road controlling authority has made a requirement, restriction or prohibition by bylaw (or other instrument) on a road under its control. A regulatory sign includes a parking sign.
25. The effect of this Rule is that whether or not a parking restriction or prohibition on a road is made under the Transport Act 1962 or the Local Government Act 2002, the Council must erect prescribed signs to draw attention to the restriction or prohibition. Section 12 of the Traffic Control Devices Rule 2004 sets out the general requirements for the way in which parking restrictions and prohibitions must be signed.
26. The Traffic and Parking Bylaw 2008 must be read in conjunction with the Land Transport (Road User) Rule 2004. Clauses 2.13 and 2.14 of the Road User Rule prohibit the *driving* of motor vehicles along a footpath and driving a motor vehicle on a lawn, garden, or other cultivation adjacent to, or forming part of, a road. At the time the Bylaw was made, Clause 6.2 of the Road User Rule 2004 stated that:

unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a road-way when it is reasonably practicable to do so on the road margin.
27. Road margin is defined as follows: "*includes any uncultivated margin of a road adjacent to but not forming part of either the roadway or the footpath (if any)*". So, parking on the road margin was allowed under this rule, but seemingly not cultivated margins, only uncultivated margins.
28. Clause 6.14 of the Road User Rule 2004 provides that a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a footpath or on a cycle path. There is no signage requirement in the Traffic Control Devices Rule 2004 for this clause. There were no provisions of the Road User Rule that prohibited the stopping, standing or parking of vehicles on lawns, gardens or other cultivated areas, which is why the Council included clause 9 in the Traffic and Parking Bylaw 2008.

Amendment to the Road User Rule and Council's submission on the Amendment

29. After the Bylaw came into force, Land Transport New Zealand (now part of the NZ Transport Agency) proposed various amendments to the Road User Rule 2004. One of the proposed amendments was that the Road User Rule would prohibit within urban traffic areas (ie areas subject to a speed limit of 50 kilometres per hour) parking on grassed areas or other cultivation forming part of a road, unless a road controlling authority indicated otherwise by signs or markings.
30. The Council made a submission on these proposed amendments. The Council's submission was that the recommended amendment should apply to urban areas with speed limits of 60 km per hour or lower and further clarification that off-roadway areas may include adjoining cultivated riverbanks. In its submission, the Council emphasised that there are many urban areas within Christchurch that are blighted by vehicles being parked on grass verges and other roadside cultivated areas. The Council argued that such parking thwarts the ability to manage parking effectively within urban areas and reduces the amenity for pedestrians and other users.
31. The Council also commented that Christchurch has many cultivated riverbanks adjacent to roads within its urban limits that are used for injudicious parking. Such parking causes damage to the grass. Vehicles, including trucks, often park in the same riverbank location causing rutting and a movement of soil and subsequent drainage issues. In most cases, Council is burdened with the cost of replanting grass and re-levelling soil in instances where soil movement has occurred. In extreme cases such parking causes stability issues for the river bank.

Final Form of Road User Rule Amendment

32. The NZ Transport Agency has now finalised the terms of the amendments to the Road User Rule and the amendments have been signed by the Minister of Transport. The amendments came into force on 1 November 2009. Clause 6.2 of the Rule has been revoked and a new clause inserted which provides as follows:

6.2 Parking vehicles off roadway

- (1) *A driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a roadway if he or she can stop, stand, or park it on the road margin without damaging ornamental grass plots, shrubs, or flower beds laid out or planted on the margin.*
 - (2) *Subclause (1) does not apply if the road controlling authority provides signs or markings, or makes a bylaw, indicating that a rule different from the one in subclause (1) applies.*
33. Unfortunately, the NZ Transport Agency did not proceed with the clause as originally drafted (or amended as Council submitted), and this new clause raises a number of issues for the Council.

Damage to ornamental grass plots

34. Clause 6.2(1) appears to authorise drivers to stop, stand or park a vehicle on the road margin **so long as it does not** damage ornamental grass plots, shrubs, or flower beds laid out or planted on the margin. Therefore, if a vehicle is parked on a grass berm or verge (that is part of the road margin) the Council would need to be able to prove that the vehicle was **damaging** ornamental grass plots, shrubs, or flower beds laid out or planted on that margin before it could issue an infringement notice. The infringement fee for this offence is \$40 (or a maximum fine on summary conviction of \$1000).
35. The Council would also need to establish that the grass berm or verge that is being damaged is an ornamental grass plot laid out or planted on the margin. It is not immediately clear what is an ornamental grass plot that has been laid out or planted on the margin. "Ornamental grass plot" was a phrase used in the now revoked regulation 35 of the Traffic Regulations 1976. Regulation 35(1)(c) was similar to clause 6.2 as it provided that "*no person, being the driver or in charge of any vehicle, shall stop, stand, or park the vehicle....so as to cause or be likely to cause damage to ornamental grass plots, shrubs, or flower beds laid out or planted on the road, or contrary to any bylaw of the controlling authority*".

36. In *Nathan v Wellington CC* 7/11/90, Ellis J, HC Wellington AP236/90 the High Court was concerned with a charge of parking on a grass plot causing or likely to cause damage to the plot. The charge as drafted did not refer to "ornamental grass plots". The court held that the infringement notice did not therefore disclose any offence, unless inferred from the reference to regulation 35(1). Even with such an inference, there was no evidence brought that the grass was an ornamental grass plot, or that the conduct was likely to cause damage. The conviction entered by the Justice of the Peace was quashed by the High Court. Unfortunately there were no statements made by the Court as to what would amount to an ornamental grass plot.
37. The ordinary definition of "ornamental" means something which is used to adorn or decorate or beautify, and it seems clear that at least one of the purposes for planting and maintaining grass berms and verges is for the beautification of the surrounding area (as well as possible traffic safety/planning purposes).
38. Section 334 of the Local Government Act 1974 also allows the Council to lay out or plant "grass plots or flower beds or trees on any road", and prohibit traffic on any such plots or flower beds. It is also not clear whether all grass plots that the Council can lay out on a road under section 334 are the same thing as an "ornamental grass plot" under clause 6.2 of the Rule.
39. Taking a commonsense approach it appears that a grass berm or verge that has been planted by the Council and/or is maintained regularly, should come within the definition of an "ornamental grass plot". It is possible that the bigger a grassed area is, the less likely it comes within the definition of an ornamental grass plot. A grass verge which extends to a river bank area may not come within the term "ornamental grass plot". In addition self seeded or growing grass areas which the Council may only maintain sporadically are also not likely to be ornamental grass plots.

How the Council should deal with this amendment?

40. According to subclause (2), the Council is not able to rely on subclause (1) if the Council provides signs or markings, or makes a bylaw, indicating that a rule different from the one in subclause (1) applies.
41. Signs or markings could include parking signs and road markings that indicate parking on the roadway is allowed, although those signs/markings would not indicate any rules in relation to parking on the road margin. However, the Council's Traffic and Parking Bylaw clearly provides what is to happen, on at least some planted road margins.
42. Arguably, clause 9 of the Bylaw does provide a rule different from the one in subclause (1). This is because clause 9 of the Traffic and Parking Bylaw prohibits the stopping, standing or parking of a motor vehicle on a grass berm or verge, but only where prescribed signs have been erected to indicate the restriction.
43. If the Council left the Bylaw as it is, without amendment then it may not be able to make use of clause 6.2(1) of the Rule where there are no signs erected (and if signs are erected it would simply issue an infringement notice under the Bylaw clause).
44. To ensure that the Council can still issue infringement notices in any situation where the requirements of clause 6.2(1) are met, the Bylaw should be amended to provide that the Bylaw does not conflict with clause 6.2(1). This will make it clear that the Council would not be required to have signs erected in those situations.
45. However, the Council may still need to use clause 9 of the Bylaw in any situations which are not covered by clause 6.2(1), for example, where damage to the margin might not be caused by parking, but the Council wants to prevent people parking on the margin for other reasons (congestion, etc), or to cover grass berms or verges that are not laid out or planted as described (e.g. riverbanks, or self grown verges such as along QEII Drive or Halswell Road).

46. It should be noted that neither the amendment to the Rule nor the recommendations contained in this report will provide a completely effective enforcement regime to deal with vehicles parking on grass berms and verges. This is primarily due to evidential difficulties in proving that a particular vehicle caused damage to the berm/ornamental grass plot. Unless an officer or a member of the public witnesses the damage being caused by the particular vehicle, the owner of the vehicle may be able to claim that the damage was caused by another vehicle or means at another time.

OPTIONS

47. The Council has two practical options in this situation:
- (a) do nothing – which would mean the Bylaw would stay as it is, Council would only enforce parking on grass verges in accordance with the Bylaw, and would not be able to issue infringement notices or prosecute under clause 6.2(1) of the Rule; or
 - (b) amend the bylaw to give the Council a wider range of enforcement options against those who park on grass verges and berms, through both the bylaw and the Rule.

The preferred option is (b) because it gives Council officers better enforcement options.