

7. PROPOSAL TO MAKE CHRISTCHURCH CITY SPEED LIMITS BYLAW 2005

Officer responsible Legal Services Manager	Author David Rolls, Solicitor, DDI 941-8892
--	---

PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council:
 - (a) Approve the draft bylaw (attached as Appendix 1) which will enable the Council to set speed limits on all roads which are under the control of the Council; and
 - (b) Commence the special consultative procedure under the Local Government Act 2002 to make that bylaw.

EXECUTIVE SUMMARY

2. On 5 April 2004 the Government formally passed the responsibility for setting speed limits on roads to road controlling authorities (RCAs). An RCA is the authority having control of a road. They include territorial authorities and Transit New Zealand. The various legal, technical and procedural requirements which RCAs must now observe in setting speed limits, are set out in the Land Transport Rule: Setting of Speed Limits 2003 (Rule 54001) ("the Rule"). Included amongst these is a requirement that each RCA make a bylaw to confirm all existing legal speed limits for roads under its control and to enable it to set new speed limits in the future.
3. Unless the Council, as an RCA, makes such a bylaw all existing speed limits on roads which are under the Council's control will revert to 100km/h upon the repeal of Section 52A of the Transport Act 1962. Presently that section is scheduled for repeal on 1 July 2005. Furthermore, until such a bylaw has been made the Council is unable to set any new speed limits on roads under its control.
4. The proposed bylaw will enable the Council to save its existing speed limits and to set new speed limits in the future. It will do this by conferring upon the Council the power to pass resolutions in this regard. The proposed bylaw will not confirm any existing speed limits nor will it set any new speed limits. It will merely provide the Council with the mechanism for doing so, that is, by way of resolution. After the proposed bylaw has come into force a report will be put before the Council with the requisite recommendations in this regard. A timetable is set out in paragraph 65 below for this process.
5. This report considers the requirements of the Local Government Act 2002 (LGA 2002) which must be met in order to make the proposed bylaw. Notwithstanding that the Council is required by the Rule to make such a bylaw, it must nevertheless comply with the Local Government Act 2002 requirements in the same manner as making any other bylaw.

BACKGROUND

6. In the past the responsibility for the setting of speed limits on public roads has been fragmented. It has been governed by a complex mix of Acts, Regulations, Gazette Notices and Bylaws. Furthermore there have been a number of organisations responsible for the various regulatory methods of setting speed limits. These included the Land Transport Safety Authority (now Land Transport New Zealand), Transit New Zealand and local authorities.
7. Local government, through individual local authorities and the NZ Local Authority Traffic Institute has, in the past, lobbied central government for a greater control over the setting of speed limits on its roads (as opposed to state highways).
8. Central government has been cautious in passing over speed limit setting responsibilities. It has been concerned to ensure that there be clear rules in place to achieve consistency throughout the country. Territorial authorities on the other hand, while accepting the need to exercise care in the setting of speed limits, have been seeking the opportunity to respond better to the needs and wishes of their communities.

9. Following a number of years of development and an extended process of stakeholder consultation the Minister of Transport, by means of The Rule, handed over the responsibility for the setting of speed limits on local roads to road controlling authorities on 5 April 2004.

LEGAL CONSIDERATIONS

The Rule

10. The Rule has been made under the Land Transport Act 1998. It requires every RCA to make a bylaw to confirm all existing legally imposed speed limits and to set new speed limits. Any speed limit which is not saved will, upon 1 July 2005, revert to the rural speed limit of 100 km/h.
11. The Rule prescribes speed limit policies, procedures for deciding on speed limits, and methods for calculating speed limits which RCAs must follow (Schedule 1). The purpose of these requirements is to ensure national consistency in speed limits.
12. The Rule allows RCAs to designate urban traffic areas (ie geographical areas in which roads are subject to a 50km/hr speed limit) and rural areas (ie roads or geographical areas to which roads are subject to the rural speed limit of 100km/hr).
13. The Rule specifies a public consultation procedure which RCAs must follow before setting a new speed limit or designating or changing an urban traffic area (Section 7.1).
14. The Rule requires RCAs to maintain a register of all speed limits, except temporary speed limits, for the roads which they control. This must be available for public inspection (Section 7.3).
15. It should be noted that the Council is not the RCA in respect of state highways which pass through its district. Transit NZ is the RCA for state highways.
16. It should also be noted that although the Council now has responsibility for setting speed limits, the enforcement of those speed limits will remain the responsibility of the Police.

The Proposed Bylaw

17. The proposed bylaw is based on a model bylaw prepared by the LTSA for use by RCAs as a template for their speed limit bylaws.
18. There is, however, one essential difference between the proposed bylaw and the model bylaw. The model bylaw provides for all saved speed limits and all new speed limits to be recorded in schedules to that bylaw. The proposed bylaw on the other hand would empower the Council to save existing speed limits and to set new speed limits by way of resolution. The speed limits would not be recorded in the bylaw but in the speed limit register which the Council is required to compile and maintain. The reasons for departing from the model bylaw in this regard are set out in paragraphs 30 to 35 below.
19. The proposed bylaw will enable the Council to execute its responsibilities under The Rule to save existing speed limits and to set new speed limits in the future. This is explained in further detail in paragraph 38 below.
20. The proposed bylaw records the duties which The Rule imposes on the Council to consult before setting a new speed limit, to install speed limit signs, and to maintain a register of speed limits.
21. The proposed bylaw will amend the existing Christchurch City Traffic and Parking Bylaw 1991. This 1991 bylaw presently contains provisions which enable the Council to set speed limits. With the recent changes in transport legislation those provisions are now redundant. They can not be relied upon to validate existing speed limits or to set new speed limits as required by The Rule. The proposed bylaw will amend the 1991 bylaw by repealing those redundant provisions. The various speed limits which have been set by the Council pursuant to those redundant provisions are specified in certain schedules to that 1991 bylaw. The proposed bylaw will repeal those schedules. The speed limits specified in those schedules will be saved by resolutions to be made pursuant to the proposed bylaw.

22. The proposed bylaw is drafted so as to come into force on two different dates. All of the provisions of that bylaw, except those which will amend the 1991 bylaw, will come into force on 15 April 2005. The latter provisions of the proposed bylaw (Clause 11 and the Schedule) will come into force on 16 May 2005. This is to give the Council time to pass a resolution pursuant to the proposed bylaw to save the speed limits prescribed in the 1991 bylaw before the 1991 bylaw is amended

The Local Government Act 2002

23. The LGA 2002 prescribes the purposes for which bylaws may be made and the process for making them. The Rule itself does not contain any bylaw making powers. To make the proposed bylaw the Council may rely on the empowering provision contained in Section 145(b) of that Act which provides that the Council may make bylaws for the purpose of:

“(b) protecting, promoting, and maintaining public health and safety:”

24. The Council may also rely on the bylaw making power contained in paragraph 13 of Section 684(1) of the Local Government Act 1974 (LGA 1974). That paragraph provides that the Council may make such bylaws as it thinks fit:

“(13) concerning roads and cycle tracks and the use thereof, and the construction of anything upon, over, or under a road or cycle track:”

25. Section 155 of the LGA 2002 provides that before commencing the process to make a bylaw the Council must determine whether:

- A bylaw is the most appropriate way to address the perceived problem.
- The proposed bylaw is the most appropriate form of bylaw.
- The proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA 1990).

The Perceived Problem

26. The Council is required by central government legislation, namely The Rule, to make a bylaw to validate all existing lawfully imposed speed limits on roads for which it is the RCA. The Rule also provides that the Council may only set new speed limits (other than temporary speed limits) for those roads by way of bylaw. The Council has no choice in this regard.
27. The purpose of The Rule is to ensure that the risk to public safety is minimised and that the freedom of road users to travel on New Zealand roads at speeds that are reasonable and appropriate is protected through checks and balances on the actions of RCAs.
28. Without such a bylaw the Council is unable to set any new speed limit for any road for which it is the RCA. Furthermore, without such a bylaw, all existing speed limits on those roads will revert to 100km/hr upon the repeal of Section 52A of Transport Act 1962. That section is scheduled for repeal on 1 July 2005.

The Most Appropriate Form of Bylaw

29. The proposed bylaw is based upon a model bylaw prepared by the LTSA for use by RCAs as a template for their speed limit bylaws.
30. As stated in paragraph 18, there is one essential difference between the model bylaw and the proposed bylaw. The model bylaw provides for all saved speed limits and all new speed limits to be recorded in schedules to that bylaw. The proposed bylaw, on the other hand, would empower the Council to save existing speed limits and to set new speed limits by way of resolution. The speed limits would not be recorded in the proposed bylaw. They would, however, be recorded in the speed limits register which the Council is, nevertheless, required by The Rule to keep and maintain.

31. There are two major disadvantages in recording speed limits in the proposed bylaw. The first is that every time the Council wished to set a new speed limit the bylaw would have to be amended. This is because schedules to a bylaw form part of that bylaw. Consequently the schedules may only be amended in the same manner as the rest of the bylaw. Each amendment would involve the Council having to follow the special consultative procedure (SCP) set out in Section 83 of the LGA 2002, unless the amendment could be said to be of a "minor effect" in terms of Section 156(2) of that Act. What constitutes a "minor effect" could well be doubtful in many cases.
32. Notwithstanding that the SCP was followed, the Council would still have to undertake the public consultation process prescribed in The Rule. The persons who are required to be consulted are listed in Section 7.1(2) of The Rule. They include:
- Any other RCA that is responsible for roads that join or that are near the road upon which the speed limit is to be set or changed;
 - Any local community that the RCA considers to be affected by the proposed speed limit;
 - The Police;
 - The Automobile Association;
 - The Director of Land Transport Safety;
 - Any other organisation or road user group that the RCA considers to be affected by the proposed speed limit.

These persons must be consulted in writing and must be given a reasonable time in which to make submissions on the proposal.

33. The Rule does provide that both forms of consultation may be undertaken at the same time. However, the SCP is a time consuming and administratively expensive procedure. It usually takes approximately three months. It is a procedure which is designed for consultation with all of the residents of the Council's district. On the other hand the procedure prescribed in The Rule is likely to take less time than the SCP. It is focussed upon consulting all of those persons likely to be affected by the proposed speed limit. Given the scope of the consultation required under The Rule it would appear quite unnecessary and unreasonable for the Council to have to consult all of the residents of its district through the SCP as well. It is envisaged that in most cases the setting or changing of a speed limit on a particular road within the Council's district is likely to affect only a limited community of persons within that district rather than every person in that district. Should the case arise where every person was likely to be affected then The Rule would necessarily require that every such person be consulted. It is therefore considered that the avoidance of the SCP will not disadvantage members of the public.
34. Empowering the Council to set speed limits by way of resolution will enable the Council to set speed limits without the need for unnecessary consultation. This is otherwise likely to be an inefficient and wasteful use of Council resources. Further, it should allow Council to set speed limits in a more timely manner. (It should be noted that consultation is not required in the saving of existing speed limits.)
35. The second major disadvantage in recording speed limits in the proposed bylaw, is that the bylaw would be voluminous. The list of current speed limits which must be saved runs into 24 pages. There will no doubt be further additions to the bylaw in future by way of new speed limits. Having regard to the requirement in The Rule that these speed limits must also be recorded in a publicly accessible register, it would seem quite unnecessary that they also be recorded in the bylaw as well.
36. The Council may rely on Section 151(2) of LGA 2002 to provide in the proposed bylaw that speed limits may be saved and set by way of resolution. That section provides that a bylaw may leave any matter or thing to be regulated, controlled or prohibited by the Council by resolution either generally, for any specified classes of case, or in a particular case.

37. It is understood that other RCAs, including Auckland City, Hutt City and Dunedin City, are also adopting this approach.
38. In relation to roads for which the Council is the RCA the proposed bylaw would enable the Council to execute its responsibilities under The Rule by:
- Empowering the Council, by resolution, to a set speed limits of 20, 30, 40, 50, 60, 70, 80 or 100 km/h; and
 - Empowering the Council, by resolution, to designate or change an urban traffic area (this term is explained in paragraph 39); and
 - Empowering the Council, by resolution, to set such speed limits on any road which is in a designated location. A designated location (which is defined in The Rule) includes:
 - a car park
 - an educational or scientific institution
 - an industrial, health, or residential facility
 - a camping ground
 - a sports facility or other recreational area
 - a botanical garden
 - a beach
 - a cemetery
 - any other location approved by the Director of Land Transport Safety
 - Requiring the Council, by resolution, to save all existing speed limits other than those 50km/h speed limits which will be saved in the designated urban traffic area; and
 - Requiring the Council, in saving existing speed limits, to designate, by way of resolution, an urban traffic area; and
39. Section 10.1(1) of The Rule requires RCAs, in saving existing speed limits, to designate an urban traffic area. An urban traffic area is an area that consists of one or more specified roads or a specified geographical area to which the urban speed limit of 50 km/h generally applies.
40. The proposed bylaw is therefore considered to be the most appropriate form of bylaw.

New Zealand Bill of Rights Act

41. The Council must determine whether the proposed speed limit bylaw gives rise to any implications under the NZBORA 1990.
42. In the author's view the provisions of the proposed bylaw do not impose any unreasonable limitations on any particular right set out in the NZBORA 1990. In setting a speed limit under the bylaw, the Council must follow the guidelines for setting speed limits and the procedures for calculating speed limits prescribed in the Rule. It must also undertake the consultation procedure prescribed in the Rule.
43. The Rule was made pursuant to the Land Transport Act 1998. The Rule itself has already gone through a public consultation process. It specifically requires the Council to save existing speed limits and it empowers the Council to set new speed limits. The purpose of these powers is to minimise the risk to public safety while at the same time granting road users the freedom to travel on roads at speeds that are reasonable and appropriate. It is the author's view that, in accordance with Section 5 of the NZBORA 1990, the bylaw is therefore a reasonable limit prescribed by law, to the rights and freedoms contained in that Act, that can be "*demonstrably justified in a free and democratic society*".

Enforcement and Penalties

44. Enforcement of speed limits will continue to be the responsibility of the Police in the same way as other traffic related offences.

45. Details of offences, penalties and fees relating to the infringement of speed limits are set out in the relevant provisions of the Land Transport Act 1998 and Transport Act 1962. These will change should the proposed bylaw be made. They are revised from time to time by central government.

FINANCIAL CONSIDERATIONS

46. The likely cost of making the proposed bylaw (that is administrative and legal) can be accommodated by budgets set for the current financial year.
47. The likely costs of the immediate implementation of the proposed bylaw can be accommodated by the Transport and City Street Unit's budget for the current financial year. These costs include the administrative costs in saving all existing speed limits, compiling and maintaining a register of speed limits, and the cost of erecting additional speed limit signs. The Council is required to do these things irrespective of the form of its bylaw. The major cost item here will be the erection of additional speed limit signs to comply with signage requirements of Section 8 of the Rule. This cost is estimated to be \$40,000.00. It can be accommodated in the Unit's budget for the current financial year in the provision made for "New Signs".
48. It is not anticipated that the passing to the Council the responsibility for setting of new speed limits will result in the Council incurring significant additional costs in future financial years. The Council has, for a number of years, set certain speed limits on its roads pursuant to the Christchurch City Traffic and Parking Bylaw 1991.
49. The proposed bylaw has been drafted in a manner that will enable the Council to set new speed limits in a timely and cost effective manner. In allowing it to set speed limits by way of resolution, it avoids the duplication of public consultation which would otherwise occur if the Council had to undertake the SCP in order to amend the bylaw.
50. There will be no cost to the Council in enforcing the proposed bylaw. As stated earlier, enforcement of speed limits will continue to be the responsibility of the Police. The revenue therefrom will continue to accrue to the Crown.

COMMENCEMENT OF SPECIAL CONSULTATIVE PROCEDURE TO MAKE THE PROPOSED BYLAW

51. Section 156 of the LGA 2002 requires the Council to follow the special consultative procedure set out in Section 83 of that Act when making a bylaw.
52. Section 83(1) requires the Council to:
- (a) *Adopt, in accordance with Section 83(1)(a), a statement of proposal together with a summary of the information contained in that proposal. That summary must comply with Section 89;*
 - (b) *Include, in accordance with the requirements of Section 83(1)(b), the statement of proposal on the agenda for a subsequent meeting of the Council;*
 - (c) *Make, in accordance with Section 83(1)(c), the statement of proposal available for public inspection both at the Civic Offices and such other places as the Council determines necessary in order to provide all ratepayers and residents of its district with reasonable access to the statement, and*
 - (d) *Give, in accordance with Section 83(1)(e) and 83(1)(g), public notice (and such other notice as the Council considers appropriate) of the proposal and the consultation being undertaken, together with notice of the period within which submissions on the proposal may be made to the Council. (This period may not be less than one month after the date of first publication of the notice.)*

STATEMENT OF PROPOSAL

53. Attached to this report as Appendix 2 is a statement of proposal which complies with the requirement of Sections 83 and 86 of LGA 2002. It comprises:
- (a) A draft of the bylaw as proposed to be adopted (as required by Section 86(2)(a); and
 - (b) The reasons for the proposal (as required by Section 86(3)(a); and
 - (c) A report of the Council's consideration, under Section 155 of the problems being addressed by the proposal (as required by Section 86(3)(b)(i)).

SUMMARY OF INFORMATION CONTAINED IN THE STATEMENT OF PROPOSAL

54. Section 83(1)(a)(ii) of the LGA 2002 requires the Council to prepare a summary of the information contained in the statement of proposal. That summary must comply with section 89.
55. Section 89 requires that the summary:
- (a) Be a fair representation of the major matters in the statement of proposal; and
 - (b) Be in a form determined by the Council; and
 - (c) Be distributed as widely as reasonably practicable (in such manner as determined appropriate by the Council, having regard to the matter to which the proposal relates) as a basis for general consultation; and
 - (d) Indicate where the statement of proposal may be inspected and how a copy may be obtained; and
 - (e) State the period in which submissions on the proposal may be made to the Council.
56. Attached to this report as Appendix 3 is a summary of information which complies with the requirements of Section 89. It is recommended that the Council formally adopt this summary (for the purposes of section 89(b)) and resolve to publish it in both the 'The Press' and the 'Christchurch Star' newspapers and on the Council's website (for the purpose of satisfying section 89(c)).

PROCESS AND TIMETABLE

57. Once the proposed bylaw has been made, and the relevant provisions of that bylaw have come into force, it will be necessary for the Council to pass resolutions, pursuant to that bylaw to:
- (a) Designate an urban traffic area (ie an area in which roads are subject to a 50km/h speed limit, saved under Section 4 of the Transport Amendment Act 1977); and
 - (b) Validate all speed limits, saved under Section 4 of the Transport Amendment Act 1977) other than:
 - (i) 50km/h speed limits on roads within a designated urban traffic area; and
 - (ii) 100km/h speed limits on roads within a rural area.
58. These resolutions will effectively save the existing legally imposed speed limits presently in force on roads under the Council's control. The Council is required to save those speed limits by Rules 10.1(1) and 10.1(2) of the Rules. If it fails to do so, all of those speed limits will revert to 100km/h on 1 July 2005.

59. A number of the speed limits to be saved have been set pursuant to, and are recorded in, the Christchurch City Traffic and Parking Bylaw 1991. All of the provisions of the proposed bylaw, other than Clause 11, are specified to come into force on 15 April 2005. Clause 11 will amend the Christchurch City Traffic and Parking Bylaw 1991 by revoking all of the provisions of that latter bylaw which relate to speed limits. In order to preserve the speed limits set under this latter bylaw until they can be saved, clause 11 of the proposed bylaw will not come into force until 16 May 2005.
60. It is also necessary for the Council, at the same time as it passes resolutions saving the existing speed limits, to pass a resolution pursuant to the proposed bylaw setting three new variable speed limits. A variable speed limit is an alternative speed limit that may be in force for a particular road depending on the presence of specified conditions at that time.
61. At its meeting on 1 July 2004, the Council approved the creation of three new 40km/h "part-time speed limit zones" on roads outside schools. They are on Ilam Road outside Cobham Intermediate School, on New Brighton Road outside Burwood School, and on Waimairi Road outside Westburn School.
62. Prior to the Rule coming into force, these "part-time speed limit zones" could be imposed pursuant to the provisions of the Christchurch City Traffic and Parking Bylaw 1991. They may now only be imposed pursuant to the provisions of the proposed bylaw and only after the procedures specified in the Rule for the setting of speed limits have been followed. In terms of the Rule, these "part-time speed limits" are now known as variable speed limits.
63. The Transport and City Streets Unit will put a report to a subsequent meeting of the Council to commence the process under the Rule for the setting of these three new variable speed limits. That process will involve the necessary consultation specified in Section 7.1 of the Rule. Notwithstanding that the proposed bylaw has not yet been made, Section 7.1(8) of the Rule permits the Council, in setting a speed limit, to undertake the consultation which is required by Section 7.1 at the same time as it undertakes the special consultative procedure to make the proposed bylaw.
64. Assuming that the proposed bylaw is made and that following the consultation under Section 7.1 of the Rule the Council wishes to set the three variable speed limits referred to above, those speed limits can be set, by way of resolution pursuant to Clause 5 of the proposed bylaw. This resolution can be passed together with the resolutions saving the existing speed limits.
65. The suggested timetable from here is:

17 February 2005	The Council resolves to commence special consultative procedure to make the proposed bylaw.
23 February 2005	Public notice of the proposal to make the proposed bylaw is given in "The Press" and the "Christchurch Star" newspapers as required by Section 83 of the LGA 2002.
24 March 2005	Closing date for public submissions on the proposal.
7 April 2005	The Council considers any public submissions and resolves whether or not to make the proposed bylaw.

If the Council resolves to make the proposed bylaw:

13 April 2005	Public notice given of the new bylaw.
15 April 2005	Clauses 1 to 10 of the new bylaw come into force.
21 April 2005	The Council resolves to save existing speed limits and to set three new variable speed limits (school zones).
16 May 2005	Clause 11 of the new bylaw comes into force and repeals redundant provisions of Christchurch City Traffic and Parking Bylaw 1991.

CONCLUSION

66. The proposed bylaw is required under the Land Transport Rule Setting of Speed Limits 2003 Rule 54001. The proposed bylaw will not alter any speed limits on any road under the Council's control. It is merely the mechanism which will enable the Council to save existing speed limits and set new speed limits on these roads. Without the bylaw the Council is unable to set any new speed limits on these roads and all existing speed limits will revert to 100km/h on 1 July 2005.

STAFF RECOMMENDATIONS

That the Council resolve:

- (a) That it notes that it is required to make a speed limits bylaw by the Land Transport Rule: Setting of Speed Limits 2003 (Rule 54001).
- (b) That it considers the proposed bylaw, attached as Appendix 1, is the most appropriate form of bylaw for this purpose.
- (c) That having regard to advice from the Council's legal adviser, the proposed bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- (d) To adopt the Statement of Proposal and the Summary of Information attached to this report (marked Appendix 2 and Appendix 3 respectively).
- (e) To include that Statement of Proposal on the agenda for the meeting of the Council to be held on Thursday 7 April 2005.
- (f) That the Statement of Proposal be made available for public inspection at the Civic Offices, all Council service centres, Council libraries and on the Council's website.
- (g) That public notice of the proposal be given in "The Press" and in the "Christchurch Star" newspapers and on the Council's website on Wednesday 23 February 2005.
- (h) That the Summary of Information be distributed by way of publication (together with the notice of the proposal) in "The Press" and in the "Christchurch Star" newspapers and on the Council's website on Wednesday 23 February 2005.
- (i) That the period within which submissions on the proposal may be made to the Council be between Wednesday 23 February 2005 and Thursday 24 March 2005.