## 5. SUMMARY OFFENCES (TAGGING AND GRAFFITI VANDALISM) AMENDMENT BILL 2008

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| **General Manager responsible:** | General Manager Regulation and Democracy Services, DDI 941-8549 |
| **Officer responsible:** | Legal Services Manager |
| **Author:** | Judith Cheyne and Terry Moody |

### PURPOSE OF REPORT

1. To report to the Council on the Summary Offences (Tagging and Graffiti Vandalism) Amendment Bill ("the Bill") and recommend a submission for the Council to approve on the Bill, and to recommend to the Council that it revoke the resolution of the 23 February 2006[1] to investigate a local Bill on the control of graffiti.

### EXECUTIVE SUMMARY

2. The Bill amends the Summary Offences Act 1981 with the policy objectives to:

   - reduce graffiti vandalism, tagging and defacing by creating a specific offence relating to those activities;
   - by limiting the sale of spraycans to those 18 years or over;
   - requiring spraycans to be kept securely in retail premises so the public cannot gain access without the help of an employee; and
   - giving judges the option in sentencing a community sentence involving cleaning graffiti and tagging in their local community.

3. This Bill is part of the Government's anti-tagging strategy, known as Stop Tagging Our Place (STOP), which provides a nation-wide approach to addressing graffiti vandalism and tagging. This strategy was launched on the 15 February 2008 and includes a funding pool to support local communities and territorial authorities to reduce or eradicate graffiti vandalism in New Zealand.

4. The amendments proposed to the Summary Offences Act are similar matters that were proposed to be covered in the Manukau City (Control of Graffiti) Bill ("the Manukau Bill")which this Council submitted on in February 2006. The Council submission stated (in part): "*The Council submits that the Select Committee should consider whether, in addition or as an alternative to this bill, legislation controlling graffiti should be enacted, which could apply to either the whole of New Zealand, or individual areas as the need arises in those areas, instead of individual local bills being promoted for the same purposes throughout New Zealand".* If that view is still held by the Council then the Bill should be supported.

5. The Council at the meeting in February 2006 resolved also to "*initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council;* ….". Given the matters included in the Bill, and the consideration by the Government of the Manukau Bill, it is recommended that the resolution of the 23 February 2006 to investigate a local Bill be revoked.

6. The Bill had its first reading on 21 February 2008 and submissions are due on 11 March 2008. The timeframe for making a submission on the Bill is extremely short. As a result, at the meeting on 28 February 2008 the Council delegated to the Regulatory and Planning Committee the power to approve a submission on the Bill on behalf of the Council.

7. The draft submission attached generally supports the provisions in the Bill.

### FINANCIAL IMPLICATIONS

8. No financial implications in making the submission other than the cost of having a Council representative go to Wellington to appear in support of the submission, if required.

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[1] *Submissions On The Manukau City Council (Control Of Street Prostitution) Bill And The Manukau City Council (Control Of Graffiti) Bill*, Council Agenda 23 February 2006

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

9. Not applicable.

**LEGAL CONSIDERATIONS**

10. The legal considerations have been taken into account in drafting the submission on the bill.

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

11. The Bill does not propose significant changes to the legal requirements and duties on the Council, but some legal issues have been identified and are discussed in the submission.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

12. Not applicable.

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

13. No.

**ALIGNMENT WITH STRATEGIES**

14. Yes.

**Do the recommendations align with the Council's strategies?**

15. Yes - the submission is consistent with the Council's strategies that incorporate or address aspects of public safety and safer communities.

**CONSULTATION FULFILMENT**

16. Internal consultation has been carried out between the Strategy and Planning Unit, the Community Support Unit and the Legal Services Unit.

**STAFF RECOMMENDATION**

It is recommended that the Committee:

(a) Approve the draft submission to be sent to the Law and Order Select Committee.

(b) Decide whether the Council will appear in support of the submission on the Bill, and if so, who will represent the Council at the hearing.

(c) To recommend to the Council that it revoke its resolution of the 23 February 2006 to "*initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council."*

**COMMITTEE RECOMMENDATION**

It is recommended that the Council:

(a) Approve the draft submission to be sent to the Law and Order Select Committee.

(b) Agrees that it wishes to appear in support of its submission on the draft Bill and determine its representation in support of the Bill.

(d) Revoke the Council resolution of 23 February 2006 to "*initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council*".

**BACKGROUND (THE ISSUES)**

**Manukau City (Control of Graffiti) Bill**

17. The Council considered a report on the Manukau Bill at a seminar on 8 February 2006 and officers were asked to report further on options for the Council concerning measures to address the issues in Christchurch as far as these were similar to those purported to be occurring in Manukau City. The officers were requested to prepare suggested wording for a submission to the Select Committee[2] if it was determined such would be made. The Manukau Bill has been reported back by the Select Committee. Parliament, against the advice of the Select Committee, adopted it and it now awaits its third reading. This Bill is likely to negate the need for the Manukau Bill

18. The purpose of the Manukau Bill was to minimise the graffiti problem by penalising offenders and providing Police and the Council with the necessary powers to control the problem. It contained provisions relating to the sale of spray paint, requiring retailers to secure cans so the public could not access them without assistance, and banning their sales to persons under 18 years. In addition to offences by retailers there were offences for marking graffiti, carrying a graffiti implement with the intention of using it to mark graffiti, or without lawful excuse in a public place or private place to which the person had no right of entry. The Manukau Bill gave the Council the power to remove graffiti on private property if it was visible from a public place subject to no objection from the property owner and the Police were given the power to request name and address information and to arrest suspected offenders.

19. The Council, at its meeting on the 23 February 2006, resolved to:

- Initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council; …and

- The following submission was adopted by the Council:

    1. *The Christchurch City Council (the Council) wishes to applaud Manukau City Council's approach and intentions in introducing this bill. Although the Council does not wish to make submissions on the content of the bill, it submits that its support of the general purpose and intention of the bill should be noted by the Select Committee.*
    2. *The Council would also like the Select Committee to note that the Council has resolved to initiate action to investigate putting forward to Parliament a local bill for the control of graffiti in the district of the Christchurch City Council.*
    3. *The Council submits that the Select Committee should consider whether, in addition or as an alternative to this bill, legislation controlling graffiti should be enacted, which could apply to either the whole of New Zealand, or individual areas as the need arises in those areas, instead of individual local bills being promoted for the same purposes throughout New Zealand.*
    4. *The Council wishes to appear in support of its submission."*

**Select Committee Report on the Manukau Bill**

20. The Local Government and Environment Select Committee considered submissions on the Bill in April/May 2006 and in its report to Parliament recommended that it not be passed. The report stated: "*The bill seeks to address an activity which has increasingly damaging effects on communities, residents, and businesses in the area (and indeed in other areas around the country), and we recognise Manukau City Council's effort and achievement in proactively developing a proposed solution. However, we do not believe that this bill will achieve its objective of controlling graffiti for the reasons explained in this report. The report also discusses possible initiatives that may assist in the control of graffiti".*[3]

[2] Report of the Local Government and Environment Committee ("The Select Committee") on the Manukau City Council (Control of Graffiti) Bill, 2006

[3] The Select Committee *op cit*, page 2

21. The Select Committee considered the Bill as presented had a number of deficiencies which are discussed in reasonable detail. The description of graffiti was wider than but not inconsistent with the description in section 33 of the Summary Offences Act 1981. They considered it was too broad and could capture some legitimate activities such as street art. They saw the problem of "tagging" as being the major problem as it had negative effects on local communities and could lead to street-gang conflicts. They had reservations about the limitations of local legislation to deal with matters of criminal law which have national application. They pointed out that: "*The limited jurisdiction of the bill also means that certain provisions in the bill could be easily circumvented. If enacted, the bill's provisions would apply to Manukau City only. Minors (those under 18 years of age) could continue to buy spray paints in adjoining areas for use in Manukau, and would be able to purchase paints in the city itself through older people. We believe there is a possibility that introducing punitive measures against graffiti in one area could result in the displacement of offending to neighbouring areas. Similarly, by concentrating its restrictions on spray paints, the bill may inadvertently encourage the use of alternative graffiti implements".*[4]

22. The Select Committee was advised that the Manukau Bill was inconsistent with the New Zealand Bill of Rights Act 1990 in two areas. *Firstly, clause 7, which prohibits the sale of spray paint to minors, appears to be inconsistent with section 19(1) of the Act. Under this section, all persons have the right to freedom from discrimination on the grounds of age from the age of 16. As there is insufficient evidence to assume that restricting the supply of spray paint to minors will minimise graffiti, certain measures in the bill seem disproportionately severe, and may penalise people purchasing spray paint for lawful purposes. Secondly, under section 23(4) of the New Zealand Bill of Rights Act, any person detained for an offence, or suspected offence, has the right to refrain from making a statement. Clause 15 of the bill, which empowers police or authorised persons to require any person suspected of committing an offence to supply their name and address, and the name and address of anyone else suspected of involvement in the alleged offence, appears to infringe this right.*

23. It was noted by the Select Committee that the Manukau Bill appeared to have been based largely on the South Australia Graffiti Control Act 2001, the provisions of which are similar to those proposed in the Manukau Bill. It (the South Australia legislation) does not appear to have succeeded in addressing the area's graffiti problem: "*Without a dedicated body to monitor and enforce it, and educate people about its provisions, the legislation has had minimal effect, and many retailers remain unaware of the law. Random checks by the state's Crime Prevention Unit indicate that retailers are not enforcing the requirement to store spray cans securely, nor are they restricting sale to minors. Furthermore, no prosecutions have been taken under the Act. We note that the bill would require retailers to bear significant compliance costs. We believe that it is unfair to expect retailers to assume these costs, when there is little evidence that the measures proposed would actually reduce the incidence of graffiti in the Manukau district*."

24. The Select Committee noted there were no provisions in law that specifically refer to "marking graffiti" but activities of that kind are covered by sections 11 (wilful damage) and 33 (bill sticking and defacing) of the Summary Offences Act 1981, and section 269(2)(a) (intentional damage) of the Crimes Act 1961. These provisions are enforced by the Police. The Select Committee considered, despite the above, that the legislation is out of date and a new offence category of graffiti would assist those responsible for prosecuting offenders.

25. The Select Committee noted with approval the work done by the Christchurch City Council to reduce graffiti vandalism in receiving complaints and by the graffiti removal team to deal promptly with such cases by clean up or painting over. The Legal Art Programme also received approval as a means of dealing with offenders to obtain changes in attitude. These programmes arose from a report prepared for the Council in 1999.[5] That report provided an extensive background to the origins of "graffiti" as experienced at that time, who was undertaking this activity in Christchurch, the different types of "graffiti" being undertaken, and examined suggested counter-measures. These included; rapid response removal; bylaws requiring property owners to remove graffiti; anti-graffiti paint treatments; prosecution of all cases, however minor; retailer education; surveillance by CCTV of graffiti prone sites; environmental design to reduce graffiti vandalism; legal sites for "street art"; and education and awareness programmes.

[4] The Select Committee, *op cit*, page 3

[5] Sarah Wylie, *Graffiti Vandalism: The Current Situation in Christchurch and Potential Counter-Measures*, July 1999

26. A number of these measures had been undertaken by the Council but often with limited success, particularly against "tagging" which is often undertaken by younger offenders. The Ministry of Justice "Beat Graffiti" Guide[6] advises that: "*A multi-faceted approach, based on using proactive, reactive, and enforcement tools, is considered the most appropriate way to manage graffiti. It also points out that local government is not the only organisation with a role to play, and suggests developing partnerships, with groups such as retailers and business associations; Keep New Zealand Beautiful; infrastructure providers; Neighbourhood Support groups; Housing New Zealand; schools and education representatives; youth justice agencies; and the Police*."

27. The Select Committee's report on the Manukau Bill, after commenting on the Government's initiatives re graffiti including a six point plan, stated: *" At present the Government's position is that there is no need for legislative change, but the Crime Prevention Unit will provide ongoing advice on whether legislation is adequate to deal with graffiti**. We are concerned that the law as it stands does not offer appropriate deterrents, and believe that its strengthening and consistent enforcement are fundamental to the success of the plan.** The first year of the graffiti strategy ends on 30 June 2007 and is intended to establish an effective basis for future projects. Work in the first year includes a stock-take of anti-graffiti initiatives around the country, a review of current sentences and the feasibility of restricting the sale of graffiti implements, and direct engagement with territorial authorities. We understand that the whole strategy will be rolled out over four years and will receive further funding as the initiatives gain momentum. Our major concern is that four years for full implementation of the plan is too long. Graffiti is one of many aspects of youth behaviour that needs addressing urgently. While we support much of the six-point plan, we recommend that it proceed with greater speed. **We strongly urge the development of national legislation to address this issue with appropriate resourcing**."*[7]

28. The Select Committee also noted the following in relation to the sale of spray paints*: "We believe that one way of addressing the promoter's concerns about the supply of graffiti implements would be to **promote a voluntary memorandum of understanding between the Council and retailers regarding the display and storage of spray paints, and possibly restrictions on the sale of these items to persons under 16.** The possible advantage of the responsible retailing method over a mandatory lock-up approach is that it provides more flexibility to act appropriately to the particular circumstances of the retailer. This is more likely to give the retailer a sense of ownership of the project, and increase the probability of the project being enforced effectively. Partnership initiatives have been undertaken between local authorities, retailers, and the spray paint industry in the United States, New South Wales, and Waitakere City."*[8]

**Summary Offences (Tagging and Graffiti Vandalism) Amendment Bill 2008 and STOP**

29. The aim of the Bill is to amend the Summary Offences Act 1981 (the Act) in order to reduce vandalism and tagging by:

- creating a specific offence for graffiti vandalism, tagging and defacing;
- limiting the sale of spraycans to those 18 years or over;
- requiring that spraycans must be kept securely so that members of the public cannot gain access to them without the help of an employee; and
- giving judges the option in sentencing of a community sentence to provide an opportunity for offenders to "right their wrong" and clean graffiti vandalism and tagging from their local community

30. The Bill is part of the Government's anti-tagging strategy, known as Stop Tagging Our Place (STOP) which provides a nation-wide approach to addressing graffiti vandalism and tagging. This strategy was launched on the 15 February 2008 and includes a funding pool to support local communities and territorial authorities to reduce or eradicate graffiti vandalism in New Zealand. The projects must meet at least one of the following objectives to be eligible for funding:

- be additional to existing activity – i.e. this funding is not intended to replace existing resourcing
- Deliver rapid removal
- Monitor the incidence of graffiti vandalism as part of a wider removal programme
- Use Crime Prevention Through Environmental Design (CPTED) principles as a tool to address the problem

6 Ministry of Justice and Local Government New Zealand, *Knowhow Beat Graffiti Guide 06*, 2006
7 The Select Committee, op cit, page 6
8 The Select Committee, op cit, page 5

- Raise awareness of the negative effects of graffiti vandalism and tagging through educational programmes and material
- Provide diversionary projects for young people currently involved in graffiti vandalism and graffiti.

31. Projects that will be run by non-government organisations, must have the written support of the nearest territorial authority, and be a legal entity. They must be able to demonstrate the intervention logic behind the project. In order to do this, applicants must show a link between the local problem, the project's activity and the likely impact of the activity on the problem. It must be clearly evident why the specific action funding is being sought for will reduce local graffiti vandalism. They must be able to show there is reasonable reason to believe that the project is likely to achieve its aims. This would include comment on the likely success of the project supported, where possible, by evidence of similar projects that have proven to be successful locally, or elsewhere. They must be able to demonstrate that the project goals or objectives will contribute to any wider strategies to reduce graffiti vandalism. If no such strategy exists, evidence that relevant stakeholders in the area have been consulted and support the project.

32. Projects not eligible for funding include any existing graffiti vandalism programmes currently if the sole purpose of the contract or grant would be to "top up" current funds. Consideration may be given to funding existing projects if funding is required to add value by a new approach or additional benefits. Projects to set up database/s to track graffiti offending or tagging would not be eligible for funding at this time. The Crime Prevention Unit is currently researching best practice models for such databases. Once this research is complete funding may be available in future funding/ grant rounds for database/s found to meet the best practice model. Any funding is available by application to the Crime Prevention Unit of the Ministry of Justice.

**Comments on the Bill Provisions**

33. The Regulatory impact statement in the Bill refers to the Manukau Bill and acknowledges that graffiti vandalism is a nation-wide problem, which a local Bill would not address. It states that "*there is a need for appropriate central Government action on the issue*". It identifies three options: the preferred option in the Amendment Bill, the *status quo* (which was not considered suitable, despite the offences that currently existed under the Summary Offences Act, due to failing to allow for community sentences and no restrictions on sales of spraycans) and the Manukau Bill option. This option was not preferred due to both its geographical limitations and lack of provisions for a community sentence to provide the opportunity for offenders to clean graffiti from their local community.

34. The preferred option provides for a new section 11A – a specific graffiti and tagging offence - with increased sentences up from $200 fine to a maximum $2,000 fine or a community-based sentence or both. In addition it is proposed that there be restrictions on sales of spraycans to person below the age of 18 years and requirements on retailers to display spraycans only directly under the control of the retailer with a fine of up to $1,500 for sale to a person under 18 or on failing to securely store spraycans. The strengthening of the offence provisions and the increased penalties, with the ability for a community based sentence appear to be welcome amendments. It would be easier in relation to enforcement if an instant fine could be given to offenders, however, the proposed submission identifies that providing for this as an infringement offence could undermine the value in also proposing community based sentences. As the Police will be the main enforcer of this legislation it is not really a matter for the Council to be overly concerned with in any event.

35. Although some doubt was expressed by the Select Committee examining the Manukau Bill regarding the effectiveness of regulating the sale of spraycans (see paragraphs 21 and 22 above), Parliament clearly believes this could be of some effect. In addition to the South Australian legislation quoted by the Select Committee as being of doubtful effectiveness it is understood New South Wales is also questioning such provisions. However, the other option mentioned by the Select Committee of voluntary controls seems to be operating well in Porirua City. It has been pointed out that spraycans are not the only instrument used for graffiti vandalism and tagging. Particularly in regard to "tagging" it has been alleged that felt pens, shoe polish, liquid paint and etching are becoming more regular methods of tagging.

36. The Minister of Justice accepts that there are new methods but considers spray-paint cans are the most common implement used in graffiti vandalism. Although etching of glass surfaces appears to be increasing as a tagging method, and with large costs involved in the replacement of windows, etc, it is unlikely that a similar restriction could be included in the proposed section 14A on the sale of glass cutting/marking equipment because many common, everyday items can be used for this purpose. The benefits of the restrictions on sales to persons under 18 years old is stated in the explanatory note to be "*to address the availability of the current primary implement for graffiti vandalism and to reduce the numbers of young persons entering the graffiti culture*" (page 6). There is no other discussion in the explanatory note to the Bill as to why the age restriction of under 18 has been chosen, instead of say under 17 or under 16. In comparison with the statistics and information in the Land Transport (Driver Licensing) Amendment Bill as to why the age limit should be lifted, it appears that the Government may not have done its homework on why the age restriction for the sale of spray paint cans should be to "under 18s". In light of the section 19(1) of the New Zealand Bill of Rights Act 1990, as raised by the Select Committee in their report on the Manukau Bill it is not clear that this age limit is appropriate. It is therefore recommended that the Council's submission seek further investigation by the Government/the Select Committee on this issue.

37. It should be noted that the wording of the new section 14A applies to "sale", not supply. There is no definition of "sale" to be inserted, so in its ordinary meaning this would not include supply. It would appear then that no offence is created if any person **supplies** a spraycan to a person under the age of 18 years. It is a defence to proceedings for an offence of selling a spraycan if the defendant proves they are an Education Board or the governing body of a tertiary education provider, or employee of either, and the buyer is enrolled at the institution and the sale was for the purpose of enabling the buyer to undertake a course at the institution. Staff have reviewed whether there also needs to be an exclusion provided for Project Legit but, as currently worded, there is no need as Project Legit does not sell spraycans. However, the submission asks the Select Committee to note that if the offence was to be amended to cover the "supply" of spraycans then a exclusion would be required for Project Legit and any other similar initiatives.

**THE OBJECTIVES**

38. To make a submission on behalf of the Council on the Bill.

**THE OPTIONS**

39. The Council has already delegated the power to the Committee to make a submission on this Bill, however, it would still be a possible option for the Committee to decide that a submission on the Bill should not be made. However, as graffiti is an issue that this Council has been discussing in relation to its Public Places Bylaw, it would appear to be more appropriate for the Council to make a submission than not. A submission could be one in support, one in opposition or one that supports parts of the Bill but not others.

**THE PREFERRED OPTION**

40. In light of the recent discussions of Council in relation to graffiti the preferred option is that the Committee approve a submission that is generally in support of the Bill, and in particular the strengthened offence provision and increased penalties. There are concerns as to whether central government has given sufficient consideration to the sale of spray cans age restriction as no information is provided in the explanatory note as to reasons for the age that has been chosen. The preferred option for the submission in this respect is not in support of one age or another but a recommendation for the Government to further investigate the appropriate age.