

## 1. PROPOSED DRAFT TRAFFIC AND PARKING BYLAW 2008

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| <b>General Manager responsible:</b> | General Manager City Environment, DDI 941-8656        |
| <b>Officer responsible:</b>         | Ross Herrett, Acting Transport and Greenspace Manager |
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### PURPOSE OF REPORT

1. The purpose of this report is to seek agreement that a bylaw is the most appropriate way of addressing traffic and parking issues, including the movement of stock and to recommend, on behalf of the Regulatory and Planning Committee, that the Council adopt the proposed *draft Traffic and Parking Bylaw 2008* (Attachment 2) for consultation and commence the special consultative procedure.

### EXECUTIVE SUMMARY

2. Two reports on this matter have been considered by the Regulatory and Planning Committee meeting on 13 February 2008 and 6 March 2008. Attachment 1 outlines the issues that are to be further discussed and considered by the Council. This reflects the requirement of section 155 of the Local Government Act 2002 (LGA 02) to identify a perceived problem and consider whether a Bylaw is the most appropriate way of addressing the perceived problem.
3. The following Bylaws have been considered as part of this review:
  - Banks Peninsula District Council (BPDC) Traffic and Parking Bylaw 1998
  - Christchurch City Council (CCC) Traffic and Parking Bylaw 1991
  - DC Stock Control Bylaw 1994
  - BPDC Licences for Vehicle Stands on Streets
4. The Local Government Act 2002 (LGA 2002) introduced a new requirement for Councils to review their Bylaws. However, the LGA 2002 also contained a transitional regime for those Bylaws made under the repealed provisions of the Local Government Act 1974 (LGA 1974).
5. Under section 293 of the LGA 2002, Bylaws made under the repealed provisions of the LGA 1974 that were in force immediately before 1 July 2003, are deemed to be validly made under the LGA 2002 and continue to be in force. However, section 293 also provides that those Bylaws that have not been subsequently revoked or that have not expired before 1 July 2008 are automatically revoked on 1 July 2008.
6. Section 158(2) of the LGA 2002 also provides that the Council must review a Bylaw made by it under the LGA 1974 (other than Bylaws to which section 293 apply) no later than 1 July 2008 if the Bylaw was made *before* 1 July 2003 (section 158(2) (a)).
7. The effect of these provisions is that the BPDC Traffic and Parking Bylaw 1998, CCC Traffic and Parking Bylaw 1991, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets Bylaw must be reviewed before 30 June 2008 to determine which provisions will be automatically revoked, which provisions should be subsequently replaced and which provisions can be revoked in any case.
8. In addition, with the inclusion of the BPDC into CCC, it is also timely to consolidate the two different Council's Bylaws into one.
9. A clause by clause analysis of the current existing clauses was undertaken to compare the clauses between the four different bylaws and whether the provisions should be retained or revoked. The clause by clause analysis table of the clauses to be retained and clauses to be revoked is in Attachment 3 and Attachment 4, respectively.
10. There is a number of traffic and parking issues faced by local authorities across New Zealand and Christchurch is no different. One of the issues is the competing demand on the road space for different types of uses eg parking and traffic flow, whilst still providing a safe and efficient infrastructure. An analysis of the various options available for dealing with traffic and parking issues has been undertaken. The following options have been considered:

- (a) Do nothing. Under this option, those parts of the BPDC Traffic and Parking Bylaw 1998, CCC Traffic and Parking Bylaw 1991, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets that are made under now repealed provisions of the LGA 74 will automatically be revoked on 1 July 2008. While unnecessary bylaws should be revoked if they are no longer required, using this option (ie doing nothing), it will be difficult to determine what has been revoked and what has not been revoked.
- (b) Revoke the CCC Traffic and Parking Bylaw 1991, BPDC Traffic and Parking Bylaw 1998, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets and rely on other legislation to deal with any issues that may arise.
- (c) Revoke the CCC Traffic and Parking Bylaw 1991, BPDC Traffic and Parking Bylaw 1998, BPDC Stock Control Bylaw 1994 and the BPDC Licences for Vehicle Stands on Streets and replace these bylaws with a consolidated Traffic and Parking Bylaw 2008. Under this option, redundant bylaw provisions can be revoked and a clear set of rules for traffic and parking will apply in the City.
11. Options (a) and (b) are not acceptable options as there is no legislation in place to deal with some of the perceived problems except by way of a bylaw. Option (c) - the consolidated draft Traffic and Parking Bylaw 2008 will address these issues by providing the Council with a means to address the various parking concerns of the local communities and also as to the use of a particular road. Option (c) is considered to be the best way of dealing with any perceived problems.
12. The proposed Traffic and Parking Bylaw 2008 is considered to be the most appropriate form of bylaw. The proposed bylaw will be reformatted so that the language of the bylaw is updated and simplified and so that provisions made under the powers from different Acts are divided into the appropriate section. This is due to the different maximum penalty liable for a breach of an offence made under the different bylaw-making powers. For example, under the *Transport Act 1962* there is a maximum penalty of \$500 for the breach of a bylaw made under that Act, whereas under the *LGA 2002* there is a maximum penalty of \$20,000 for the breach of a bylaw made under that Act. It is important that the different penalties payable are clearly identified.
13. The proposed Traffic and Parking Bylaw 2008 will also contain some new provisions. The clause by clause analysis of these is contained in Attachment 5. In the August 2007 seminar, it was proposed that one of the new clauses to be added was the misuse of an operation mobility card. There was, however, a recent amendment to Clause 6.4 of the Land Transport (Road User) Rule 2004 which covers this situation. The new provision in the Land Transport (Road User) Rule 2004 which came into force on 17 January 2008 is:
- “6.4(1A) Without limiting subclause (1), a driver or person in charge of a vehicle must not stop, stand, or park the vehicle in any parking area reserved for disabled persons unless:*
- (a) *the driver or any passenger is disabled; and*
- (b) *an approved disabled person’s parking permit is prominently displayed in the vehicle.”*
14. The previously proposed new clause is therefore, no longer required.
15. One of the new clauses to be introduced relating to heavy vehicles will likely be controversial. There are a number of possible ways to restrict heavy vehicles being parked on residential streets. In the seminar presented to the Council in August 2007, it was proposed that a provision be included which enables the Council by way of a resolution to restrict heavy vehicles parked on a residential street at night. Since then, the Council has received other views on this issue. Possible options include:
- banning heavy vehicles parked on residential streets unless the Council has by resolution allowed the parking, stopping or standing of heavy vehicles on those streets, or
  - allowing heavy vehicles to be parked on residential streets for no more than an hour, which essentially is a complete ban on heavy vehicles parking on residential streets.
16. Draft options are included in Attachment 1 to this report and set out various possible ways in which the bylaw could provide an answer to the perceived problems.

17. The issues that need to be considered with the different options are the impact it would have on all road users and whether the response to the perceived problems is appropriate in the circumstances. In other words, is it a proportionate and reasonable response? There is a perceived safety issue from motorists with heavy vehicles parked on residential streets. The Parking Section receives between 200 and 250 calls a year regarding whether large heavy vehicles are allowed under bylaws to be parked on residential streets in Christchurch. As it is not an offence to do so, no exact records have been kept of the number of calls received. However, 29 requests for services (RFS) were logged from 2006 and 2007 for complaints relating to heavy motor vehicles parked on the street. There are also 1075 owners/operators who reside in the Christchurch area owning one heavy vehicle. The total number of owners/operators would be great than this if the number of owners/operators who own multiple vehicles are included. If there was a complete ban on heavy vehicles parked on residential streets, those owners will have to find alternative storage areas which may result in increased freight cost which would be passed onto the consumers.
18. In addition to the clauses, there are amendments to existing clauses which may bring in new provisions that were not previously covered. This applies in the clause relating to restriction on movement of stock. There was previously no provision to determine the type of stock crossing that would be most appropriate on a particular road. A graph which is used by other Council's is therefore to be adopted. This graph assesses the type of stock crossing control that is required dependent on the number of stock to be moved, the intensity of the stock movement and also the average daily traffic volume.

#### **FINANCIAL IMPLICATIONS**

19. Inspection and enforcement activity for the proposed new Bylaw arising from this review is likely to be similar to that required under the current Bylaws.
20. Staff resources would be required to process the permit for stock movement.
21. New signage will be required at the attended off-street parking buildings outlining the conditions of entry. The estimated total cost to supply and install the required signage is \$10,000.

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

22. The enforcement of Bylaws is provided for in the LTCCP Regulatory Services group of activities.

#### **LEGAL CONSIDERATIONS**

23. Section 145 of the LGA 2002 provides general bylaw making powers for local authorities for the purposes of:
  - (a) protecting the public from nuisance
  - (b) protecting, promoting, and maintaining public health and safety
  - (c) minimising the potential for offensive behaviour in public places
24. Section 146(a) of the LGA 2002 authorises the Council to make bylaws regulating trading in public places. Section 146(b) of the LGA 2002 authorises the Council to make bylaws for the purposes of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the Council.
25. Section 72 of the Transport Act 1962 also has specific bylaw-making powers relating to the use of roads. These powers relate to stock on roads, heavy traffic, one way streets, and various other traffic restrictions.
26. Section 591A of the LGA 1974 contains specific bylaw-making powers in relation to parking places and transport stations. Section 684(1)(13) of the LGA 1974 authorises the Council to make bylaws generally concerning roads, cycle tracks, and the construction of anything upon or over a road or cycle track.

27. Reviews must be carried out in accordance with LGA 2002. Relevant parts of the Act include section 155, which requires that the Council is satisfied that a bylaw is necessary and that it is the most appropriate way of addressing the perceived problems; section 77, which sets out the requirements in relation to decisions, in particular, identifying options and assessing them; and section 83, which sets out the Special Consultative Procedure, outlining the consultation process, including notification, submissions, hearings etc.
28. In undertaking the review, in accordance with *Section 155* of the LGA 2002, the Council must make the following determinations:
- (a) Identification of a perceived problem, and consideration of whether a bylaw is the most appropriate way of addressing the perceived problem; and
  - (b) If it has determined that a bylaw is the most appropriate way of addressing the perceived problem, then whether:
    - (i) A new bylaw or the reviewed bylaw is the most appropriate form of bylaw (section 155(2) (a)); and
    - (ii) A new Bylaw or the reviewed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (no bylaw can be made which is inconsistent with the New Zealand Bill of Rights Act 1990 (section 155(3))).
29. In addition, under the general law, there are four requirements for a valid Bylaw. These are:
- (a) an Act of Parliament must empower the Council to make the bylaw. In other words, the Council must have clear statutory authority to make the proposed bylaw.
  - (b) the bylaw must not be repugnant to the general laws of New Zealand. The basic proposition is that delegated legislation must not override primary legislation. With respect to a bylaw, if it were to override another statute or the common law, then the bylaw could be found to be invalid because it is repugnant to the general laws of New Zealand.
  - (c) the bylaw must be certain. There must be adequate information as to the duties of those who are to obey it.
  - (d) the bylaw must be reasonable. The reasonableness of any bylaw is a major consideration. The leading case setting out factors that the courts will consider when assessing the reasonableness of a bylaw is *McCarthy v Madden* (1914) 33 NZLR 1251. Relevant principles from this case include:
    - (i) where a bylaw necessarily affects a right common to all citizens, it must be scrutinised with greater care than a bylaw which simply affects the inhabitants of a particular district;
    - (ii) the reasonableness of the bylaw can only be ascertained in relation to the surrounding facts, including the nature and condition of the locality in which it takes effect, the danger or inconvenience it is designed to remedy, and whether or not public or private rights are unnecessarily or unjustly invaded;
    - (iii) a bylaw which unnecessarily interferes with a public right without producing a corresponding benefit to the inhabitants of the locality in which it applies must necessarily be unreasonable.
30. The Legal Services Unit considers that the form of the Bylaw, as proposed, is the most appropriate form, and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

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

31. Yes, as above.

32. The clause by clause analysis compares the current clauses across the Bylaws, and contains advice on whether a clause should be included in the new draft bylaw. The clauses were assessed to see whether:
- the issues they were designed to address still exist
  - the issues are significant, either by frequency or seriousness
  - the issues need to be controlled by regulatory means or can be dealt with by other means – that is, whether or not a bylaw is an effective tool
  - the issues are covered by new or amended legislation
  - the clauses are reasonably able to be enforced, and
  - the clauses are consistent with the Bill of Rights Act.
33. Any regulation, including bylaws, should consider the Ministry of Economic Development's Code of Good Regulatory Practice, which suggests that the following should be considered:
- *efficiency* by adopting only regulation for which the costs to society are justified by the benefits, regulation at the lowest cost, taking into account alternatives
  - *effectiveness* to ensure regulation can be complied with and enforced, at the lowest possible cost
  - *transparency* by defining the nature and extent of the problem and evaluating the need for action
  - *clarity* by making things as simple as possible, using plain language where possible, and keeping discretion to a minimum
  - *fairness and equity* any obligations or standards should be imposed impartially and consistently.
34. To summarise the legal conclusions reached
- a consolidated Traffic and Parking Bylaw is considered to be the best way of dealing with perceived traffic and parking problems in the City
  - the draft Traffic and Parking Bylaw is the most appropriate form of bylaw
  - the draft Traffic and Parking Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 such that the bylaw can be said to be inconsistent with that Act. In this respect, particular regard has been given to the clause relating to prohibited times on roads.
  - the draft Traffic and Parking Bylaw is authorised under sections 145 and 146 of the LGA 2002, section 591A and 684(1)(13) of the LGA 1974, and section 72 of the Transport Act 1962.
  - the draft Traffic and Parking Bylaw is not considered to be repugnant to the general laws of New Zealand. Again particular consideration has been given to the clause relating to prohibited times on roads.
  - the draft bylaw is certain.
  - the draft bylaw is reasonable. While the bylaw does interfere with the public's right to park in a given space, the benefits of controlled parking and traffic movement give a reasonable public benefit in return. Further analysis of "reasonableness" concerns is contained below in paragraphs 41 to 71.

#### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

35. Aligns with the Streets and Transport activities by contributing to the Council's Community outcomes:
- safety (by providing a safe transport system); and
  - community (by providing easy access to facilities).
  - governance (by providing the opportunity for the community to participate in decision-making through consultation on plans and projects).

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

36. The bylaw would be consistent with the commitment in the Our Community Plan, Volume 1, Regulatory services: Legislative requirements are enforced to ensure the safety and health of people.

## ALIGNMENT WITH STRATEGIES

37. The proposed new bylaw will manage and control traffic and parking including the movement of stock in such a way as to balance the various and competing demands of the road space to ensure that it is safe for all users.
38. The Parking Strategy for the Garden City 2003 aims to have a City where parking is provided and managed to integrate with the community's aspirations for its development; protect the environment; support economic vitality; and complement the overall transport system.
39. The Christchurch *Central City Revitalisation Strategy* aims to develop a "vibrant, fun, exciting, safe and sustainable heart of Christchurch..." The Strategy aims to "enhance pedestrian, cyclist, and public transport accessibility and safety in and around the Central City..."
40. The *Safer Christchurch Strategy* aims to see rates of injury and crime decline, for people to feel safe at all times in Christchurch City, and for Christchurch to have excellent safety networks, support people and services. One of the ways of measuring the success of the Strategy is that "pedestrians, cyclists, motorists and people with disabilities can move safely around our city".
41. The *Pedestrian Strategy for Christchurch, February 2001*, states: "The Christchurch City Council is committed to the support of pedestrians and the encouragement of walking as a method of travel and for social recreation. The Council will work to create a City in which: the pedestrian environment is friendly, safe and accessible; more people walk, more often; all pedestrians are able to move about freely and with confidence".
42. The *Christchurch Cycling Strategy* states: "The City has a long-term approach to making cycling safe, enjoyable and [to] increase the number of people who cycle (for transport and recreation). The Cycling strategy is a confirmation by the Council of its full commitment to cycling and aim to more actively promote cycling as part of Christchurch's sustainable transport mix".
43. A further consideration is the *Equity and Access for People with Disabilities Policy*, through which "the Council will endeavour to remove the barriers to participation and contribution to community life for people with disabilities and their families/whanau". Goal 4.5 states that the Council will endeavour to "enforce regulations relating to footpaths and streets to allow people with disabilities to move about unobstructed".

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

44. As above.

## CONSULTATION FULFILMENT

45. A seminar was presented to the Council on 28 August 2007 on the bylaw review. A further joint Council and Community Board seminar was held on 13 February 2008 to give a summary of the bylaws being reviewed, including traffic and parking.
46. If the Council determines that a bylaw should be developed to address the traffic and parking related issues, and the proposed draft Traffic and Parking Bylaw 2008 is adopted, then as part of the special consultative procedure stakeholder groups that may have an interest in the matters covered will be given the opportunity to make submissions and to be heard before a hearings panel, if they so wish.
47. A report was initially considered by the Regulatory and Planning Committee on 13 February 2008, and as part of that meeting the Committee had requested further information including the rationale and justification for some of the clauses that are to be included in the proposed Traffic and Parking Bylaw 2008. A further report was presented to the Regulatory and Planning Committee on 6 March 2008.
48. Initial consultation with the Road Transport Association and NZ Trucking Association was undertaken on 21 February 2008. Their feedback from the consultation will be presented at the meeting.

## REGULATORY AND PLANNING COMMITTEE RECOMMENDATIONS

The Regulatory and Planning Committee recommends to the Council:

- (a) That the following Bylaws be revoked and replaced by the attached draft Traffic and Parking Bylaw 2008 (Attachment 1), subject to any changes the Committee resolves;
  - BPDC Traffic and Parking Bylaw 1998
  - CCC Traffic and Parking Bylaw 1991
  - BPDC Stock Control Bylaw 1994
  - BPDC Licences for Vehicle Stands on Streets
- (b) That the following registers be established:
  - (i) One Way Streets Register
  - (ii) Restricted Vehicles on Specified Roads Register
  - (iii) Prohibited Times on Roads for Vehicles below 3,500kg Register
  - (iv) Vehicles on Grass Verges Register
  - (v) Heavy Vehicles on Residential Streets Register
  - (vi) Stock Driving Routes Register
  - (vii) Stock Driving Prohibited/Restricted Routes Register
- (c) That the content in the Schedules be transferred onto the following registers:
  - (i) the content in the Fifth Schedule of the Christchurch City Council Traffic and Parking Bylaw 1991 be transferred onto the One Way Streets Register
  - (ii) the content in the Third Schedule of the Banks Peninsula District Council Traffic and Parking Bylaw 1998 be transferred onto the One Way Streets Register
  - (iii) the content in the Second Schedule and the Sixth Schedule of the Christchurch City Council Traffic and Parking Bylaw 1991 be transferred onto the Restricted Vehicles on Specified Roads Register
  - (iv) the content in the Fourth Schedule of the Banks Peninsula District Council Traffic and Parking Bylaw 1998 be transferred onto the Restricted Vehicles on Specified Roads Register
  - (v) the content in the Ninth Schedule of the Christchurch City Council Traffic and Parking Bylaw 1991 be transferred onto the Prohibited Times on Roads for Vehicles below 3,500kg Register
- (d) That the attached draft Bylaw, in terms of section 155 of the LGA 02
  - (i) is the most appropriate way to address perceived problems relating to traffic, parking, and movement of livestock issues in the City; and
  - (ii) is the most appropriate form of bylaw; and
  - (iii) does not give rise to any implications under the New Zealand Bill of Rights Act 1990;
- (e) That the attached draft bylaw
  - (i) is authorised by the LGA 1974, the LGA 2002 and the Transport Act 1962;
  - (ii) is not repugnant to the general laws of New Zealand;
  - (iii) is certain; and
  - (iv) is reasonable.
- (f) That the draft Statement of Proposal (Attachment 6) is adopted, subject to any changes the Committee resolves;
- (g) That the draft Summary of Information (Attachment 7) is adopted, subject to any changes the Committee resolves;

- (h) That the special consultative procedure commences on 29 March 2008 and the last submission date shall be 1 May 2008;
- (i) That a hearings panel be appointed.

At its meeting on 11 March 2008 the Committee specifically addressed:

- Clause 9 – Heavy Vehicles on Residential Streets
- Clause 16 – Prohibited times on roads
- Clause 23 – Immobilised/immobile vehicles
- Clause 24 – Displaying vehicles on streets

-and there was a majority viewpoint reached on each clause. The amended provisions for Clauses 9, 16 and 23 were agreed to, while that of Clause 24 was agreed to pro-forma but left, for further discussion at the Council meeting.

Further staff comment was sought on this clause for the Council meeting.



## BACKGROUND (THE ISSUES)

### DISCUSSION

49. The following bylaws have been considered as part of this review:
- Banks Peninsula District Council (BPDC) Traffic and Parking Bylaw 1998
  - Christchurch City Council (CCC) Traffic and Parking Bylaw 1991
  - BPDC Stock Control Bylaw 1994
  - BPDC Licences for Vehicle Stands on Streets
50. The main issues to be covered by the draft Traffic and Parking Bylaw 2008 is the management of traffic and parking and the movement of livestock. There are some clauses contained in the current bylaws which are covered by existing legislation or by other bylaws and therefore should be revoked. The following section analyses the requirement of the provisions to be included in the propose draft CCC Traffic and Parking Bylaw 2008.

### Traffic and Parking

51. *Sections 591A and 684(1) (13) of the LGA 74 and Section 72 of the Transport Act 1962* authorise the Council to make bylaws for the purpose of imposing any parking, stopping or standing restrictions. This allows Council to restrict or limit the time vehicles may use parking spaces and also prohibit stopping in certain places where capacity is limited or safety is required. One of the main parking issues is the conflict between commuter parking and parking for visitors/shoppers to a particular area. Imposing parking restrictions is the only way to achieve a balance between the competing demands. A bylaw is therefore the most appropriate and reasonable way to deal with the problems associated with parking in the City.
52. The provision in the proposed bylaw will not only cover general restrictions in relation to parking, stopping or standing but be further expanded to incorporate the different means and methods of controlling a restricted parking area eg by way of meters or otherwise (eg coupon parking). This will also remove the need for some of the other provisions in the current bylaws.
53. The proposed provision caters for restrictions for the different classes of road users eg motorcycles and buses, thereby removing the need for a specific clause relating to the parking of vehicles by disabled persons which is another class of road users.
54. Provisions relating to vehicles parked on grass berm or verges are provided mainly for pedestrian safety. The draft bylaw provides that no person may park a vehicle on a grass berm. It also provides that a vehicle may only be parked on a grass verge if the grass verge is on a road which is listed on the Vehicles on Grass Verges Register. These provisions have been included because there are some areas where no footpaths are provided and pedestrians use the berm or verge area. If a vehicle was parked on the berm/verge, the vehicle may obstruct the pedestrian's path and force the pedestrian to step out onto the roadway. In addition, there may be damage caused to the berm/verge with vehicles travelling on it as it is not constructed to the same standard as the roadway. A bylaw is the most appropriate way and reasonable way to deal with this problem.

55. The provision relating to heavy vehicles on residential streets is one of the new clauses to be included. There are currently a number of local streets in Christchurch where the Council signs prohibit the use of heavy vehicles on those streets except for heavy vehicles making deliveries. These signs were erected due to requests from the community regarding traffic, in particular heavy vehicles using these roads as a "short cut". These signs appear to have been erected under *Section 70AA* of the *Transport Act 1962* which provides that in the case of any road under its control, the Council may from time to time, by public notice, direct that any heavy traffic, or any specified kind of heavy traffic defined in the notice, shall not proceed between any two places by way of any road or roads specified in the notice. However, rather than rely on this provision which does not relate to a bylaw (or require the policy analysis that is associated with making a bylaw), it is proposed that a provision is introduced into the Traffic and Parking Bylaw 2008 which enables the Council by resolution, to prohibit, limit or restrict the use of any road by any heavy motor vehicle at any time.
56. The issues with heavy vehicles on some roads are due to the classification of those roads and the type of traffic that is reasonably expected to be travelling on those roads. All roads within the CCC are classified into local, collector or arterial roads and as an example, any traffic travelling on a local road should be local traffic ie. the person driving the vehicle has a reason to be on that street because the driver or their passenger either lives or is visiting someone on that street or travelling through that street because there is no other alternative route. It would be unfair to the local community who have specifically chosen to live on a local road to then have a road which functions like an arterial road due to the nature of the traffic travelling on it. Another issue with heavy vehicles on some roads, especially local roads, is the road environment that has been created. The junctions/intersections may also have been narrowed and it would be unsuitable for heavy vehicles to manoeuvre through the intersections safely without encroaching onto the opposing lane or damaging parts of the road (eg footpaths).
57. Section 72(1) (i) of the Transport Act 1962 authorises the Council to make a bylaw which prohibits or restricts absolutely or conditionally any specified class of traffic (whether heavy traffic or not), or any specified motor vehicle or class of motor vehicle which by reason of its size or nature or the nature of the goods carried is unsuitable for use on any road or roads specified in the bylaw. The draft bylaw relies on this section to enable the Council to establish a Heavy Vehicles on Residential Streets Register which will specify local road or part of a local road in an area zoned "living" or "residential" which may not be used by heavy motor vehicles. This provision is considered to be reasonable because the Council will need to pass a resolution in relation to each local road to add that road to the register. Therefore a sound case will need to be established before the Council will make such a resolution. The draft bylaw also provides that the prohibition will not apply if:
- (a) the heavy motor vehicle is conveying an owner or occupier of, or a bona fide visitor to, a property fronting the residential road; or
  - (b) there is no other alternative route other than to use the residential road.
58. Nor will the prohibition apply to apply to heavy motor vehicles
- (a) providing an emergency service on the road or in the immediate vicinity; or
  - (b) loading or unloading that vehicle in the course of trade; or
  - (c) carrying out work as a network utility operator on the road.
59. The parking of heavy vehicles on residential streets is another issue relating to heavy vehicles that is included in the proposed draft CCC Traffic and Parking Bylaw. *Section 591A(1)(d)* of the *LGA 1974* authorises the Council to make a bylaw prohibiting or restricting parking in residential areas by specified classes of vehicles, either generally or at specified times where in the Council's opinion such parking is likely to cause a nuisance or danger. There has been a number of incidences where complaints have been received by the Council regarding heavy vehicles being parked outside a resident's property and causing a nuisance to the residents affected. It is believed that it is not reasonable for a community to be living in a residential area to expect heavy vehicles to be parked in front of their property at all times. There are different provisions that could be applied and these are contained in Attachment 1 to this report.

60. There are other provisions contained in this part which relates to the parking restrictions provisions and ensure better compliance and effectiveness of the parking restrictions eg allowing an authorised officer to temporarily discontinue a parking space or temporarily discontinue a parking space except for the use of a trade's vehicle or other specified vehicle, the use of parking coupons etc.

### **Traffic Movement Restrictions**

61. Bylaws relating to one way streets, roads or traffic lanes restricted to specific classes or vehicles and turning, stock droving routes are provided for under section 72 of the Transport Act 1962. One way streets and prohibitions on u-turns, left or right turns are created for safety and capacity reasons. Special vehicle lanes on roads or traffic lanes or any turning movement to be made only by specified classes or vehicles carrying specified classes of loads or not less than a specified number of occupants allows the Council the authority, if they wish to promote or allow a certain class of vehicle priority.
62. The provision relating to prohibited times on roads was included to prevent car enthusiasts congregating on roads and causing a nuisance to the adjacent residents. A recent Council report was presented on 21 June 2007 and this considered the legal implications of this provision in light of the *New Zealand Bill of Rights Act 1990 (BORA)*. Further legal advice has been obtained on this issue and a copy of this is in Attachment 8. The legal advice concludes that while the matter is not beyond doubt, there is a good argument that the benefits to local residents, the temporal and other exceptions to the limitation, and the degree of harm the bylaw is seeking to prevent combine to make the bylaw reasonable and subsequently not repugnant to the general laws of New Zealand.
63. This provision relies on *Section 684(1) (30)* of the *LGA 1974* which has been repealed and consequently, this provision will be automatically revoked on 1 July 2008. However, *Sections 145 and 146* of the *LGA 2002* provide the Council with the authority to make this provision and therefore this provision can be retained. It is recommended that this provision be located in the 'Traffic Movement Restrictions' part in the proposed Traffic and Parking Bylaw.

### **Events**

64. In some circumstances, the event that is to be held on the road has a significant impact on the road network as it may involve road closures, removing of parking or restricting certain traffic manoeuvres. Ensuring that applications are to be made to the Council in regards to any events that are to be held on the road will assist the Council to ensure that the public are aware of the event and minimise any disruption it may cause to the community. This provision also assists the Council in complying with the *Transport (Vehicular Traffic Road Closure) Regulations 1965* and *Schedule 10* of the *Local Government Act 1974*. *Section 145* of the *LGA 2002* authorises the Council to make a bylaw protecting, promoting, and maintaining public health and safety.

### **Vehicle crossings**

65. It is acknowledged that there are circumstances where access to a site may not be possible at an authorised crossing point either due to accessibility or the lack of an existing driveway. As a compromise, this provision allows access to the site by crossing the footpath provided that temporary measures are in place to protect the footpath. In addition, the requirement for a traffic management plan will assist to ensure that any traffic hazards and considerations for other road users are identified. The provision also ensures the appropriate process of installing a vehicle crossing is adhered to.

### **Machinery or equipment on road**

66. The provision on the use of machinery, equipment and any other objects that may be left on the road are included in the bylaw as there may be a hazard to other road users. Generally, a person wishing to operate machinery or equipment on roads will need to obtain the prior consent of an authorised officer. The requirement of a traffic management plan will ensure that considerations for road users are provided for. The bylaw also includes a provision dealing with waste taker bins or other receptacles. Again, persons wishing to place one of these bins on the road will need to obtain the prior written consent of an authorised officer and submit a Traffic Management Plan which is satisfactory to the Council in all respects. This represents a balance between the competing interests of road users and is considered to be reasonable.

67. Caravans, immobilised/immobile vehicles and using a vehicle to attach advertising materials, are vehicles which are parked on the road and effectively using the road as a storage facility. This means that the parking spaces are not available to other users and it causes inconvenience to the general public especially in areas where there is a high parking demand.
68. In relation to caravans, BPDC has a provision which does not allow caravans and campervans for the purpose of temporary living accommodation for any continuous period exceeding 24 hours, whereas the CCC had a seven days period. It is proposed that a seven days period be applied to be consistent with clause 6.19 of the Land Transport (Road User) Rule 2004 regarding parking a trailer on the roadway. The Public Places Bylaw deals with people temporarily residing or sleeping in public places.
69. In relation to the clause relating to immobilised/immobile vehicle, it is acknowledged, that in the case where a vehicle has broken down, the owner may have no alternative but to leave the vehicle on the street while remedial works to the vehicle have been organised. Therefore the provision will provide that an immobilised vehicle may be parked on the road for a 7 day period until the owner rectifies the situation. This provision is not considered to be inconsistent with sections 356 and 356A of the LGA 1974 which relate to the removal of certain vehicles from roads eg abandoned vehicles or vehicles with no warrant of fitness.
70. The provision on displaying vehicles on street is included in the bylaw to address the issue of businesses which use the road as an extension of their business to store and/or advertise their vehicles and thereby causing an inconvenience and nuisance to the general public as the spaces are then not available to other road users and also act as a distraction to passing traffic. It is considered that this provision is authorised by section 145 of the LGA 2002 which authorises the Council to make bylaws protecting the public from nuisance as well as section 146 of the LGA 2002 which authorises the Council to make bylaws regulating trading in public places. Storage of vehicles on public places for business purposes can be viewed as one aspect of trading in a public place.
71. The provision prohibiting parking vehicles on the road to be worked on unless the repairs are of an urgent but minor matter is included not only for the safety for both the passing motorists as well as the person working on the vehicle but also to prevent damage to the road, environment and noise control.

### **Stock Control**

72. Sections 145(a) and 145(b) of the LGA 2002 provide the Council with the authority to make a Bylaw to protect the public from nuisance and to protect, promote, and maintain public health and safety. In addition, Section 146(b) (vi) authorises the Council to make a bylaw managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority. There is a clear safety issue for both stock, drivers and other road users when stock are moved on the roads. There are also issues about effluent on roads. Effluent can be a nuisance as it sticks to vehicles. It also corrodes the road surface, potentially requiring the Council to reseal roads earlier than anticipated.
73. Previously, CCC did not have any bylaw to control the movement of stock but Banks Peninsula has had such a bylaw. The draft bylaw introduces some new rules about the movement of stock on City roads. These rules are considered to be a reasonable balance between the needs of stock drivers and the other users of roads. It also requires stock owners and drivers to ensure that the amount of faecal waste deposited on the carriageway is kept to a minimum and removed either as soon as practicable for stock other than milking cows or within 30 minutes after the conclusion of each milking in the case of milking cows.
74. An additional further restriction is included in Part VI of this bylaw to further improve the safety for both stock movement and other traffic. The bylaw implements a stock movement permit system for milking cows. Part of the application process for a permit requires the Council to consider whether a stock underpass would be more appropriate than a stock crossing. A graph to determine the stock crossing status is adopted from other local authorities. It means that for roads which carry a higher volume of traffic may require a stock underpass.

## Miscellaneous

75. This provision relating to materials/debris on road and damage to road is one of the new provisions to be included in this Bylaw.
76. Traffic hazards on roads are caused when contractors working on a site are not vigilant with the way they access a site or not ensuring that they rectify the situation as soon as it occurs. There are situations where materials/debris eg mud, stones etc. are brought onto the road and causes damage to passing road users with the materials being flicked up. It also causes other issues such as blocked drains with materials being washed into the stormwater system. Excess materials being discharged into the waterways also create environmental problems.
77. Damage to the roads especially to footpaths is also another safety concern that the Council has particularly for pedestrians. The contractors should therefore be responsible to ensure that they take better care to avoid such situations.
78. *Section 357(1)* of the *LGA 1974* provides that it is an offence to cause certain types of damage to roads. The penalties are as follows: a fine not exceeding \$1,000 and, where the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued. The defendant may be ordered to pay the cost incurred by the Council in removing any matter, or in repairing any damage caused. This penalty is considered to be inappropriate especially for contractors who are aware of the requirements to ensure that roads must not be damaged and also if there are any materials/debris brought onto or left on the road from a site.
79. *Section 146(b)(vi)* of the *LGA 2002* authorises the Council to make a bylaw managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority. Including a provision in the proposed Bylaw to deal with damage to roads, berms, and footpaths will ensure that better care is undertaken to avoid such damage.
80. The powers of the police officer, enforcement officers and parking warden/officer are provided for in the Transport Act 1962, sections 356 and 356A of the LGA 1974 and section 113 of the Land Transport Act 1998. This is provided to further clarify the authority of the police officer, enforcement officer and parking warden/officer to remove any vehicle or thing which are parked or placed on the road in breach of any provisions in this Bylaw.

## ASSESSMENT OF OPTIONS

### The Preferred Option

81. The preferred option is to revoke the four bylaws and create a new consolidated traffic and parking bylaw which would be rationalised and modernised.

|                      | <b>Benefits (current and future)</b>   | <b>Costs (current and future)</b>  |
|----------------------|--|--|
| <b>Social</b>        | <ul style="list-style-type: none"><li>• An easier to understand bylaw as it would be written in modern plain English</li><li>• Able to include new provisions</li><li>• A consolidated bylaw to cover the whole of CCC jurisdiction rather than having separate bylaws</li></ul> | <ul style="list-style-type: none"><li>• Need to advertise and communicate to the public of the changes</li></ul> |
| <b>Cultural</b>      | <ul style="list-style-type: none"><li>• None specific</li></ul>  | <ul style="list-style-type: none"><li>• None specific</li></ul>  |
| <b>Environmental</b> | <ul style="list-style-type: none"><li>• None specific</li></ul>  | <ul style="list-style-type: none"><li>• None specific</li></ul>  |
| <b>Economic</b>      | <ul style="list-style-type: none"><li>• None specific</li></ul>  | <ul style="list-style-type: none"><li>• None specific</li></ul>  |

**Extent to which community outcomes are achieved:**

The community outcomes that this option would contribute to include:

- a **well governed city** by having a new consolidated traffic and parking bylaw which is
- a **safe transport system** and **access to facilities for the community** by providing the mechanism to regulate and control traffic and parking

**Impact on the Council's capacity and responsibilities:**

Inspection and enforcement activity for the bylaw, as proposed, is likely to be similar to that required under the current bylaws.

The introduction of a permit system for the movement of stock would require additional staff resources to process the permits. A permit system would enable the Council to determine the type of crossing required eg whether a level crossing or a stock underpass is appropriate.

**Effects on Maori:**

There will be no specific effect on Maori.

**Consistency with existing Council policies:**

Current policies relating to the regulation and control of traffic and parking include:

- Bus stop location policy (adopted 16 December 1999)
- Central City Transport Concept Plan (adopted 27 October 2005)
- Christchurch Road Safety Strategy (adopted 26 August 2004)
- Citywide Public Transport Priority Plan (adopted 26 August 2004)
- Cycling (adopted 27 April 1994)
- Give way/stop Controls (adopted 27 July 2000)
- Maintenance of Private Rights-of-Way (adopted 22 April 1991, reconfirmed 24 October 2002)
- Parking – Kerbside Parking Limit Lines (adopted 23 October 1996)
- Parking Strategy (adopted 26 June 2003)
- Public Transport Policy (adopted 24 June 1998)
- Right Turn Phases at Traffic Signals (adopted 27 May 1998)
- Traffic Calming Policy (adopted 28 June 1995, reconfirmed 25 February 1999)

**Views and preferences of persons affected or likely to have an interest:**

The Inspections and Enforcement Unit is in favour of this option.

Further views would be obtained through the Special Consultative Procedure.

Both the MED's Guide to Good Regulatory Practice, and the Legislation Advisory Committee's Guidelines on Process and Content of Legislation promote the importance of clarity through plain English legal drafting in order to increase the public's understanding of their legal obligations.

**Other relevant matters:**

Section 158(2) of the LGA 2002 requires the Council to review the Bylaws by 30 June 2008.

The amalgamation of the BPDC and the CCC requires an amalgamation of the bylaws which cover the whole region under CCC jurisdiction.

## Maintain the Status Quo (if not preferred option)

82. The status quo is not the preferred option because the clauses in the Bylaws were made under a range of Bylaw making powers eg LGA 1974 and the Transport Act 1962. Some of the clauses were made under provisions of the LGA 1974 that have now been repealed. These clauses need to be reviewed by 30 June 2008; otherwise, they will be automatically revoked. It would be unclear and confusing to allow parts of the bylaws to be revoked whilst some of the clauses are retained. In addition, retaining the four separate bylaws which is separated into the two different districts, would fail to acknowledge or respond to the inclusion of BPDC into CCC.

|   | <b>Benefits (current and future)</b>   | <b>Costs (current and future)</b>  |
|---|--|--|
| <b>Social</b>   | <ul style="list-style-type: none"> <li>Existing Bylaws may be known to some people – no new requirements to publicise</li> </ul> | <ul style="list-style-type: none"> <li>Confusion and uncertainty as to the status and enforceability of the Bylaws</li> <li>Reputation of the Council tarnished by not meeting the LGA 02 review requirements</li> <li>Reputation of the Council tarnished by failing to update Bylaws as a result of the BPDC/CCC amalgamation in a timely manner</li> <li>Some of the clauses are repetitive</li> <li>The language used is sometimes convoluted and confusing</li> </ul> |
| <b>Cultural</b>   | <ul style="list-style-type: none"> <li>None specific</li> </ul>  | <ul style="list-style-type: none"> <li>None specific</li> </ul>  |
| <b>Environmental</b>  | <ul style="list-style-type: none"> <li>None specific</li> </ul>  | <ul style="list-style-type: none"> <li>None specific</li> </ul>  |
| <b>Economic</b>   | <ul style="list-style-type: none"> <li>None specific</li> </ul>  | <ul style="list-style-type: none"> <li>Legal uncertainty as to the status and enforceability of the Bylaws</li> <li>Open to legal challenge</li> </ul>   |
| <p><b>Extent to which community outcomes are achieved:</b></p> <p>The community outcome of a <b>well governed city</b> would not be met, as the maintaining of the current situation would be confusing and uncertain.</p> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>Section 158(2) of the LGA 2002 requires the Council to review the Bylaws by 30 June 2008. Failing to meet this requirement would tarnish the Council's reputation. It would also create an uncertain legal environment as to which clauses are enforceable.</p> <p><b>Effects on Maori:</b></p> <p>There will be no specific effect on Maori – maintaining the status quo would have a negative impact on the city as a whole.</p> <p><b>Consistency with existing Council policies:</b></p> <p>The Council has policies which currently cover a wide range of matters relating to the control of traffic and parking (see the preferred option list). These policies would continue to be used.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>The Legal Services Unit does not support maintaining the status quo, nor does the Inspections and Enforcement Unit.</p> <p><b>Other relevant matters:</b></p> <p>As discussed above, the confusion on the legality of the clauses within the bylaws for both the community and anyone who needs to enforce them is not preferred.</p> |  |  |

**At Least one Other Option (or an explanation of why another option has not been considered)**

83. The third option is to revoke the four bylaws and rely on other legislation to deal with any issues that may arise. This is not a preferred option as some of the issues can not be dealt with by any other way except by way of a bylaw.

|                      | <b>Benefits (current and future)</b>                                   | <b>Costs (current and future)</b>   |
|----------------------|--|---|
| <b>Social</b>        | <ul style="list-style-type: none"> <li>no bylaws to enforce</li> </ul> | <ul style="list-style-type: none"> <li>public expectations will not be met</li> <li>no or low compliance of traffic direction and parking restrictions as it will not be enforceable</li> <li>negative impact on the safety and efficiency of the road network</li> </ul> |
| <b>Cultural</b>      | <ul style="list-style-type: none"> <li>none specific</li> </ul>        | <ul style="list-style-type: none"> <li>none specific</li> </ul>   |
| <b>Environmental</b> | <ul style="list-style-type: none"> <li>none specific</li> </ul>        | <ul style="list-style-type: none"> <li>the efficiency of the road network would have environmental impact</li> </ul>  |
| <b>Economic</b>      | <ul style="list-style-type: none"> <li>none specific</li> </ul>        | <ul style="list-style-type: none"> <li>there may be financial impact on businesses if there are no regulation and control on parking</li> </ul>   |

**Extent to which community outcomes are achieved:**

The community outcome of a **well governed city**, providing a **safe transport system** and **access to facilities for the community** will not be met as there will be no or low compliance of the controls in place as they will not be enforceable.

**Impact on the Council's capacity and responsibilities:**

The community expectations on the regulation and control of traffic and parking will not be met as there may not be any legislation under which Council can enforce on.

**Effects on Maori:**

There will be no specific effect on Maori – revoking the Bylaws will have a negative impact on the city as a whole.

**Consistency with existing Council policies:**

Will not be consistent with existing Council's policies especially in relation to safety and parking (see preferred option list).

**Views and preferences of persons affected or likely to have an interest:**

The Legal Services Unit, Inspections and Enforcement Unit and the Transport and Greenspace Unit do not support revoking the bylaws.

**Other relevant matters:**

As discussed above, it is not appropriate for traffic movement and parking to be left uncontrolled.