

## 2. OPERATIONAL POLICES – HEAVY VEHICLE PARKING IN A RESIDENTIAL AREA AND PROHIBITED TIMES ON ROADS

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941-8608
<b>Officer responsible:</b>	Transport and Greenspace Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's approval to adopt two new operational policies relating to the Christchurch City Council Traffic and Parking Bylaw 2008. The two operational policies are: *Heavy Vehicle Parking in a Residential Area* and *Prohibited Times on Roads*. See **Attachment 1** and **Attachment 3**, respectively.

### EXECUTIVE SUMMARY

2. The Christchurch City Council Traffic & Parking Bylaw 2008 (the Bylaw) was adopted on 19 June 2008 and came into force on 1 July 2008. At the time the Bylaw was adopted, there were a number of other recommendations that were made by the Hearing Panel which included preparing operational policies for the clauses relating to 'heavy vehicle parking in a residential area' and 'prohibited times on roads'. The following resolutions were made by the Council:
  - (a) *Direct staff to prepare an operational policy relating to the clause 'heavy vehicle parking on residential streets' in the Traffic and Parking Bylaw, including setting out the process and matters to be taken into consideration in decision-making.*
  - (b) *Direct staff to prepare an operational policy relating to the clause 'prohibited times on roads' in the Traffic and Parking Bylaw, including setting out the process and matters to be taken into consideration in decision-making*

#### **Heavy vehicle parking in a residential area**

3. The clause relating to restricting heavy vehicle parking in a residential area was first introduced and adopted by the Council on 19 June 2008, which came into force on 1 July 2008 through the bylaw review process that was required under the Local Government Act 2002. This newly introduced provision in the Bylaw allows the Council to prohibit by resolution heavy vehicle parking on a particular street, in a residential area, at a specified time. The restriction is subject to the Council installing the prescribed signs, as is required by the Transport Act 1962 and its associated regulations.
4. An operational policy will ensure that there is a transparent process in place and consistency when applying this provision. The process includes consultation with the transport industry as it may be able to achieve willing compliance with its members, without the Council having to impose a restriction. Currently, there are not streets which have a heavy vehicle parking restriction on it but a register has been developed for future use. See **Attachment 2**.

#### **Prohibited times on roads**

5. The clause relating to prohibiting motor vehicles weighing less than 3,500 kilograms on specified roads during certain times was first introduced and adopted by the Council on 28 June 2001 through an amendment to the Council's Traffic and Parking Bylaw 1991. The clause was aimed at restricting car enthusiasts (including spectators) from congregating on the road and causing a nuisance to the adjacent residents. See **Attachment 4** for the Prohibited Times on Roads Register which contains the roads where there is a prohibition on motor vehicles weighing less than 3,500 kilograms.

6. There are concerns raised that the “boy racer/street racing” provision in the Bylaw impinges on the New Zealand Bill of Rights Act 1990. This issue was investigated and a legal opinion was obtained in August 2007 from Simpson Grierson (see **Attachment 5**). The legal advice notes that there is 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. However, it is noted that this is not beyond doubt.
7. With an operational policy in place, it will provide the Council and staff the limitations of imposing the restriction and also the considerations that need to be taken into account to ensure that whatever decision is made, that it is reasonable and robust. This will also assist the community in understanding the process and criteria used when determining whether a street will have a prohibition on vehicles under 3,500 kilograms.

#### **FINANCIAL IMPLICATIONS**

8. There are no financial implications involve in establishing an operational policy.
9. The financial implications arising from each decision will form part of the consideration of whether or not to pursue the restrictions and will be addressed in each report, for example, signage requirement.

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

10. See above.

#### **LEGAL CONSIDERATIONS**

11. Clause 10 of the Christchurch City Council Traffic and Parking Bylaw 2008 provides the Council with the authority to prohibit heavy motor vehicles parking on a specified road in a residential area during the specified time, by resolution. Clause 10 also requires the Council to erect the prescribed signs.
12. Clause 15 of the Christchurch City Council Traffic and Parking Bylaw 2008 provides the Council with the authority to prohibit motor vehicles weighing less than 3,500 kilograms from using a specified road at specified times, by resolution. Clause 15 also requires the Council to erect signs on the road describing the restriction.
13. A legal opinion was obtained from Simpson Grierson in August 2007 regarding the legality of the prohibited times on roads clause. See **Attachment 5**. The advice considered the implication of this provision in light of the New Zealand Bill of Rights Act 1990.
14. The legal advice notes that whether or not the limits are reasonable would depend on whether the limit is proportional to the objective. The case law on reasonableness indicates that the courts will carefully scrutinise bylaws that impact on the rights of the general public. Against this, a court will weigh the benefits to the locality, and the significance of the harm that the bylaw is seeking to prevent.
15. 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. This would also relate to the reasonableness of the decision that Council makes using this clause.
16. Any report to the Council seeking to impose such restrictions will have to address the above issues.

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

17. As above.

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

18. N/A.

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

19. N/A.

#### **ALIGNMENT WITH STRATEGIES**

20. N/A.

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

21. As above.

#### **CONSULTATION FULFILMENT**

22. This report was requested by the Regulatory and Planning Committee as a result of the special consultative procedure that was carried out for the Christchurch City Council Traffic and Parking Bylaw 2008.

23. During the Special Consultative Procedure for the Traffic and Parking Bylaw review, there were a number of submissions received enquiring about how a "Register" would work. This indicates that some submitters support the development of operational policies to ensure that there is a process set down and followed when making any future decisions.

#### **STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Adopt the attached "Operational Policy – Heavy Vehicle Parking in a Residential Area" that sets out the framework for assessing and processing requests for roads to be added to the "Heavy Vehicle Parking in a Residential Area Register".
- (b) Adopt the attached "Operational Policy – Prohibited Times on Roads" that sets out the framework for assessing and processing requests for roads to be added to the "Prohibited Times on Roads Register".

#### **COMMITTEE RECOMMENDATION**

It is recommended that the staff recommendation be adopted.

The Committee **decided** to update Community Boards on the amended operational policies at the November 2008 Community Board Chairpersons' meeting.