

#### 4. ENFORCEMENT ISSUES ARISING FROM THE 2008 BYLAW REVIEWS

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| <b>General Manager responsible:</b> | General Manager Regulation and Democracy Services, DDI 941-8549 |
| <b>Officer responsible:</b>         | Legal Services Manager  |
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##### PURPOSE OF REPORT

1. To advise the Council in relation to its resolution of 19 June 2008:
  - Requesting staff to prepare advice for the Council on implications of, and possible advocacy for, an infringement regime which is provided for but not yet enabled through the Local Government Act 2002
  - To make recommendations to Local Government New Zealand and Land Transport New Zealand to seek a change to the Land Transport Rule: Traffic Control Devices 2004 to vary the signage requirement regarding certain offences.

##### EXECUTIVE SUMMARY

###### *Infringement Regime Under the Local Government Act 2002*

2. The Local Government Act 2002 (LGA 02) contains an infringement regime that would enable infringement offences to be enforced using infringement notices as opposed to a summary proceeding. An infringement offence is defined as an offence specified as such in regulations made under section 259(a). Breaches of bylaws may prescribed as infringement offences in any such regulations.
3. The Council has consistently submitted that the infringement regime under the LGA 02 should be brought into force. To date, no regulations have been made under section 259. However, it is still open to the Council, at any time, to make a submission addressed to both the Minister of Justice and the Minister of Local Government asking that regulations be made prescribing that breaches of specific Christchurch City Council bylaws are infringement offences for the purposes of the LGA 02. This approach has been adopted in relation to breaches of navigation bylaws under the Local Government Act 1974, and 11 sets of regulations have been made under corresponding provisions.

###### *Signage Requirement under the Traffic Control Devices Rule*

4. The requirement for signage comes from section 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004. These sections provide that a road controlling authority must install regulatory signs to draw attention to a requirement, restriction or prohibition on road users when that road controlling authority has made a requirement, restriction or prohibition by bylaw (or other instrument) on a road under its control. A regulatory sign includes a parking sign. The effect of this section is that whether or not a parking restriction or prohibition on a road is made under the Transport Act 1962 or the LGA 02, the Council must erect prescribed signs to draw attention to the restriction or prohibition. Section 12 of the Traffic Control Devices Rule 2004 sets out the general requirements for the way in which parking restrictions and prohibitions must be signed.
5. This has consequences for offences against the Christchurch City Council Traffic and Parking Bylaw 2008 (parking on grass berms or verges, and heavy vehicles parking on residential areas).
6. In order to seek a change to the Traffic Control Devices Rule 2004, the Council will need to make a submission to the New Zealand Transport Agency (as of 1 August 2008 Land Transport New Zealand and Transit New Zealand were merged into the New Zealand Transport Agency). An amendment to the Traffic Control Devices Rule 2004 is currently in the policy development phase, so there will be an opportunity, in due course, for the Council to make a submission in the context of a formal consultation on the Rule. However, it is not clear when the draft Rule will be put out for consultation.

7. Another way of approaching these specific issues would be to propose amendments to the Land Transport Road User Rule 2004. A draft amendment to the Land Transport Road User Rule has been published (no. 61001/4), with submissions to be made by 16 October 2008. The effect of the proposed amendment will be that unless the Council indicates otherwise by means of signs or markings, a driver or person in charge of a vehicle must not stop, stand, or park a motor vehicle on a grassed area or other cultivation forming part of a road that is within an urban traffic area. The reference to "a grassed area or other cultivation" appears to cover both grass berms and grass verges. This restriction will apply in urban traffic areas. An urban traffic area is an area which is subject to a speed limit of 50km/h. This parking restriction will be able to be enforced by the Council's parking enforcement officers. This report recommends that the Committee requests that a submission be prepared on the yellow draft of the Road User Amendment (Rule 61001/4):
  - (a) in support of the proposed clause 6.2 in relation to the parking on grass verges and berms; and
  - (b) proposes an amendment to the Road User Rule 2004 to insert a new provision that the parking of heavy motor vehicles is prohibited in residential areas.
8. It will then be open to the Council to subsequently propose an amendment to the Traffic Control Devices Rule 2004 if the first submission is unsuccessful.

#### **FINANCIAL IMPLICATIONS**

9. There are no financial implications arising out of this report.

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

10. N/A

#### **LEGAL CONSIDERATIONS**

##### *Infringement Regime Under the Local Government Act 2002*

11. Subpart 3 of Part 9 of the LGA 02 contains an infringement regime that would enable infringement offences to be enforced using infringement notices as opposed to a summary proceeding. An infringement offence is defined as an offence specified as such in regulations made under section 259(a). Section 259(a) provides that the Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations for prescribing breaches of bylaws that are infringement offences under the LGA 02. At present no regulations have been made under section 259 of the LGA 02 and therefore it is not possible to use this easier and more practical regime to enforce breaches of the Council's bylaws.
12. By comparison, the Building Act 2004 contains a similar infringement offence regime. As of 1 July 2008, the Building (Infringement Offences, Fees, and Forms) Regulations 2007 came into force which enable certain building offences to be enforced using an infringement notice procedure. (Examples of these offences include failing to comply with the requirement that building work must be carried out in accordance with a building consent, for which the infringement fine is \$750, or failing to comply with a notice to fix for which the infringement fine is \$1,000.) The Transport Act 1962 also allows for the enforcement of parking offences (where those parking offences are breaches of a bylaw made under the Transport Act 1962) using an infringement notice regime.
13. Another example of an infringement regime in relation to bylaws are the provisions relating to navigation bylaws made by regional councils under section 684B of the Local Government Act 1974 (the LGA 74). Section 699A of the LGA 74 enables regulations specifying which breaches of navigation bylaws are infringement offences for the purposes of section 699A. There are currently 11 sets of regulations in force prescribing breaches of specific bylaws as infringement offences. For example the Local Government (Infringement Fees for Offences: Hawke's Bay Regional Navigation and Safety Bylaws) Regulations 2003 or the Local Government (Infringement Fees for Offences—Environment Canterbury Navigation Safety Bylaws) Regulations 2005.

14. However, in the absence of a general infringement offence regime for bylaw offences, the Council must use its traditional enforcement tools set out in the LGA 02 such as prosecutions (by laying an information in the District Court), injunctions, and removal of works/things (and recovery of costs). Most of these actions result in a higher cost to the Council than if it were given the power to issue infringement notices. There are also other alternatives to the means provided in the LGA 02, for example, cancelling or suspending permits/licences or using other means of persuasion for compliance, such as policies/strategies - eg if we want to encourage people to not leave glass bottles on the street then providing more rubbish/recycling bins on the street may help.
15. Over the last four years, the Council has consistently and constantly made submissions to the relevant body advocating for the introduction of regulations to bring the infringement regime into effect. Recent examples are: the submissions on the last Local Government Amendment Bill, the Ministry of Economic Development's review of regulatory frameworks and the LGNZ Roadshow, with the most recent one being the submission to the Local Government Commission. (In this respect the Local Government Commission recently released its summary report on the Review of the Local Government Act 2002 and the Local Electoral Act 2001. In the summary report the Commission stated that "*In response to a number of submissions on the subject, we also recommend that regulations be made under section 259 as soon as practicable to prescribe breaches of bylaws that are infringement offences along with associated infringement fees.*")
16. It is always open to the Council to make further unsolicited submissions to the Local Government Commission or the Law Commission on the issue. However, given the approach of the Government in relation to navigation bylaws (ie that each bylaw is the subject of its own regulation), the best approach appears to be to make a submission addressed to both the Minister of Local Government and the Minister of Justice requesting that the Governor-General make regulations specific to Christchurch City Council prescribing that breaches of particular Christchurch City Council bylaws are to be treated as infringement offences. In the submission, the Council would need to address which clauses of which Bylaw should be subject to the infringement offence regime and the suggested infringement fees (which must not exceed \$1,000).
17. Examples of breaches of Christchurch City Council Bylaws could include breaches of the following clauses in the following Bylaws:

Christchurch City Council Traffic and Parking Bylaw 2008

19. Use of Construction Machinery or Equipment
20. Use of Waste-taker Bins, Receptacles or Any Other Object
21. Motorhomes and Immobilised Vehicles
22. Using the Road for Storage
23. Working on Vehicles

Christchurch City Council Parks and Reserves Bylaw 2008

6. Behaviour in Reserves
7. Animals
8. Vehicles, Other Traffic, Mechanical Devices and Vessels
9. Fires
10. Camping
11. Tents, Booths etc
12. Aircraft
13. Sports and Games
14. Botanic Gardens
15. Rawhiti Golf Course

Christchurch City Council Marine and River Facilities Bylaw 2008

4. Use of Marine and River Facilities by Commercial and Charter Operators
5. Use of Wharves and Jetties
6. Obstruction of Marine and River Facilities

## *Signage Requirement Under the Traffic Control Devices Rule 2004*

18. The Council resolved on 19 June 2008 to make recommendations to Local Government New Zealand and Land Transport New Zealand to seek a change to the Land Transport Rule: Traffic Control Devices 2004 to vary the signage requirement regarding certain offences.
19. This resolution relates to the requirement in section 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004 that a road controlling authority must install regulatory signs to draw attention to a requirement, restriction or prohibition on road users when that road controlling authority has made a requirement, restriction or prohibition by bylaw (or other instrument) on a road under its control. A regulatory sign includes a parking sign. The effect of this Rule is that whether or not a parking restriction or prohibition on a road is made under the Transport Act 1962 or the LGA 02, the Council must erect prescribed signs to draw attention to the restriction or prohibition. Section 12 of the Traffic Control Devices Rule 2004 sets out the general requirements for the way in which parking restrictions and prohibitions must be signed.
20. This has consequences for offences against the Christchurch City Council Traffic and Parking Bylaw 2008 being
  - Clause 9 Parking on grass berms or verges
  - Clause 10 Heavy vehicles parking on residential streets.
21. At present, clause 9 of the Christchurch City Council Traffic and Parking Bylaw 2008 provides that no person may stop, stand or park a motor vehicle on a grass berm or verge where prescribed signs indicate no stopping, standing or parking, as the case may be. Clause 10 provides for the Council to specify by resolution any road or part of a road in a residential area which may not be used by heavy motor vehicles for the purposes of stopping, standing, or parking for the time period or periods for which the restriction applies. Clause 10 is subject to the Council erecting the prescribed signs.
22. In order to seek a change to the Traffic Control Devices Rule 2004, the Council will need to make a submission to the New Zealand Transport Agency. (As of 1 August 2008 Land Transport New Zealand and Transit New Zealand were merged into the New Zealand Transport Agency). The website of the New Zealand Transport Agency states that a Traffic Control Devices Amendment (Rule 54002/2) is in the "Blue phase". This Rule is intended to implement Road Safety 2010 safety intervention recommendations including results from trials, such as road markings before pedestrian crossings, and requirements for the placement of signs and the frequency for changing speed limits.
23. The Council is not prevented from making a submission to the New Zealand Transport Agency at any time. However, it is more likely that proper consideration would be given to a submission in the context of the formal consultation process for rule-making. The New Zealand Transport Agency notes that there are five stages of rule-making which are:
  - Blue phase: policy development, which may include a discussion paper on policy proposals.
  - Red phase (optional): Draft of the legislative provisions sent to registered interest groups.
  - Yellow phase: Public consultation (advertised in public notice columns of the major metropolitan and regional newspapers and distributed widely).
  - Green phase (optional): Draft of Rule released for final comment if there's a long delay or major changes after the yellow draft was released.
  - White phase: This is the draft which is sent to the Ministry of Transport for government scrutiny. The Ministry and other departments and agencies may make changes before the Rule is submitted to Cabinet and then to the Minister to sign.
24. Given that there is a proposal to amend the Traffic Control Devices Rule 2004 and this is in the policy development phase, one option is to wait until this draft Rule comes out for consultation (ie the yellow phase). In terms of a possible submission, there are various options. These are:
  - Option 1: Propose a broad amendment to section 4(2) of the Traffic Control Devices Rule 2004 to exempt bylaws relating to parking on grass verges and berms and the parking of heavy motor vehicles in residential areas:
  - Option 2: Propose an amendment to section 12 of the Traffic Control Devices Rule 2004 to exempt bylaws relating to parking on grass verges and berms and the parking of heavy motor vehicles in residential areas:
  - Option 3: Option 2 plus an added provision that before the Council issues an infringement notice, the Council must issue a warning notice to the registered owner of the vehicle:

25. In deciding whether to make a submission to propose a Rule change, the Council first needs to consider whether any other non-regulatory options are available to deal with parking on grass berms and verges and the parking of heavy vehicles in residential areas, which may obviate the need for such restrictions. Options for dealing with parking on grass berms and verges include landscaping changes (eg using rocks, boulders, planting vegetation or trees on the grassed areas to deter parking), fencing or creating larger footpaths. It is always open to the Council to erect signage in areas where such parking is considered a problem. There are however, limited measures that can be done to deter heavy vehicles parking in residential areas as the roads still need to cater for rubbish trucks, emergency service vehicles and sometimes buses.
26. It is open to the Council to propose a wide-ranging amendment to section 4.2(2) and 4.2(3) of the Traffic Control Devices Rule 2004 which deals broadly with the requirements of signage (ie Option 1). However, given that the Council is concerned about the signage requirements for parking of vehicles on grass berms and verges and the parking of heavy vehicles in residential areas, the Council could propose that a clause be inserted in Part 12 of the Traffic Control Devices Rule 2004 which exempts these matters from signage (ie Option 2). It is suggested that of these two options, the amendment to section 12 is the better option because it deals specifically with parking signs and the Council's concerns relate to parking issues.
27. Given that the Council would be proposing quite a broad amendment to the Traffic Control Devices Rule 2004, it may also want to consider softening the proposal by providing that before any infringement notice is issued, the Council must issue a warning notice to the registered owner of the vehicle (ie Option 3).
28. However, another way of dealing with issue is to propose an amendment to the Land Transport Road User Rule 2004. With respect to grass verges and berms, clauses 2.13 and 2.14 of the Road User Rule 2004 currently prohibit the driving of motor vehicles along a footpath and driving a motor vehicle on a lawn, garden, or other cultivation adjacent to, or forming part of, a road. Clause 6.2 of the Road User Rule 2004 states that unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a road-way when it is reasonably practicable to do so on the road margin. Road margin is defined as including any uncultivated margin of a road adjacent to but not forming part of either the roadway or the footpath (if any). Clause 6.14 of the Road User Rule 2004 provides that a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a footpath or on a cycle path. There is no signage requirement in the Traffic Control Devices Rule 2004 for this clause.
29. A draft amendment to the Land Transport Road User Rule has been published (no. 61001/4), with submissions to be made by **16 October 2008**. The New Zealand Transport Agency are proposing that the rule will come into force on 1 July 2009.
30. The proposed changes to the rule include an amended rule, clause 6.2 which deals with parking of vehicles off the roadway. The proposed clause as amended provides as follows:
- 6.2 Parking vehicles off roadway**
- “(1) *Except as provided in subclause (2), unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a roadway when it is reasonably practicable to do so on the road margin.*
- “(2) *Unless a road controlling authority, by means of signs or markings, indicates otherwise, a driver or person in charge of a vehicle must not stop, stand, or park a motor vehicle on a grassed area or other cultivation forming part of a road that is within an urban traffic area.*
31. The draft also proposes inserting a new definition of urban traffic area in clause 1.6 of the rule which is as follows:
- “urban traffic area has the same meaning as in Part 2 of Land Transport Rule: Setting of Speed Limits 2003”.*

32. In the accompanying Overview Document published by the New Zealand Transport Agency, it states as follows:

*Reason for proposed change In many areas, parking on grass berms and other roadside cultivation not only damages the surface but it may affect underground services. Parking in these areas can prevent pedestrians and mobility device users from accessing roads and footpaths if there is no other path, and, it creates a hazard for other motorists if the vehicle is parked on a bend or other location where visibility is limited. Drivers who park off the road on the grass often claim that they are allowing the free movement of traffic on the roadway and are reducing the risk of their vehicle being hit by another vehicle. In many urban roads parking on the road does slow traffic along the road, and this is not an undesirable outcome for the safety of all road users and the concerns of local residents about speeding vehicles.*

*Currently, clause 2.14 of the Rule states "A driver must not drive a motor vehicle on a lawn, garden or other cultivation that is adjacent to, or forms part of, a road". This creates a 'moving' offence. Parking enforcement officers are not able to enforce 'moving' offences and the proposed change would enable them to do so. A previous proposal to make a similar change affecting all roads led to comments suggesting the issue is largely an urban problem and should be directed at urban areas. Submissions in support of the earlier proposal indicated local authorities are having difficulty in defining their restrictions relating to parking on grass verges and are concerned about the current need for extensive sign installation to give effect to their bylaws. The proposal, therefore, would put in place uniform, nationally defined requirements for road users (which could be varied in specific cases by signs and markings). It would also address the concerns of road controlling authorities about the cost of installing and maintaining signs and markings and visual intrusion of these signs and markings.*

33. The effect of the proposed amendment will be that unless the Council indicates otherwise by means of signs or markings, a driver or person in charge of a vehicle must not stop, stand, or park a motor vehicle on a grassed area or other cultivation forming part of a road that is within an urban traffic area. The reference to 'a grassed area or other cultivation' appears to cover both grass berms and grass verges. This restriction will apply in urban traffic areas. An urban traffic area is an area which is subject to a speed limit of 50km/h. This parking restriction will be able to be enforced by the Council's parking enforcement officers.
34. Because this draft Rule is out for consultation now, it is suggested that the Council first makes a submission supporting the proposed clause 6.2 **as well as** proposing that a new clause be inserted to prohibit the parking of heavy motor vehicles in residential areas.
35. It will then be open to the Council to subsequently propose an amendment to the Traffic Control Devices Rule 2004 if this submission is unsuccessful.

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

36. Not applicable.

#### **ALIGNMENT WITH STRATEGIES**

37. This proposal aligns with the vision and policies as set out in the Council's Parking Strategy 2003. One of the visions that the Parking Strategy 2003 provides is that parking will be provided and managed to minimise its impact on the natural and physical environment and support the sustainable use of resources. Removing the need for signage relating to the prohibition of parking on grass berms and verges and the prohibition of heavy motor vehicles parking in residential areas will minimise the visual impact on the environment and support Christchurch's Garden City values.

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

38. Yes.

#### **CONSULTATION FULFILMENT**

39. This matter has been discussed with the Inspections and Enforcement Unit and the Transport and Greenspace Unit (who usually provide input on any submission on the Land Transport Rules).

## **STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Notes that the Local Government Act 2002 contains an infringement regime that would enable infringement offences (such as breaches of Council bylaws) to be enforced using infringement notices as opposed to a summary proceeding.
- (b) Requests that a submission be prepared to the Minister of Local Government and the Minister of Justice seeking that regulations are promulgated to provide that breaches of some Council bylaws are infringement offences under the Local Government Act 2002 and may be enforced by issuing an infringement notice.
- (c) Requests that a submission be prepared on the yellow draft of the Road User Amendment (Rule 61001/4),
  - (i) In support of the proposed clause 6.2 in relation to the parking on grass verges and berms; and
  - (ii) Proposes an amendment to the Road User Rule 2004 to insert a new provision that the parking of heavy motor vehicles is prohibited in residential areas.
- (d) Subsequently requests that if its submission is unsuccessful on the Land Transport Road User Rule, a submission be prepared on the yellow draft of the Traffic Control Devices Amendment (Rule 54002/2) when it comes out for consultation. The submission would incorporate either of the following options:
  - (i) Option 1 (ie a broad amendment to section 4(2) of the Traffic Control Devices Rule 2004 to exempt bylaws relating to the parking of heavy motor vehicles in residential areas); or
  - (ii) Options 2 and 3 (ie proposing an amendment to section 12 of the Traffic Control Devices Rule 2004 to exempt bylaws relating to the parking of heavy motor vehicles in residential areas, and an added provision that before the Council issues an infringement notice, the Council must issue a warning notice to the registered owner of the vehicle).

## **COMMITTEE RECOMMENDATION**

It is recommended that the Council:

- (a) Notes that the Local Government Act 2002 contains an infringement regime that would enable infringement offences (such as breaches of Council bylaws) to be enforced using infringement notices as opposed to a summary proceeding.
- (b) Requests that a submission be prepared to the Minister of Local Government and the Minister of Justice seeking that regulations are promulgated to provide that breaches of some Council bylaws are infringement offences under the Local Government Act 2002 and may be enforced by issuing an infringement notice.
- (c) Requests that a submission be prepared on the yellow draft of the Road User Amendment (Rule 61001/4),
  - (i) In support of the proposed clause 6.2 in relation to the parking on grass verges and berms.
- (d) Subsequently requests that if its submission is unsuccessful on the Land Transport Road User Rule, a submission be prepared on the yellow draft of the Traffic Control Devices Amendment (Rule 54002/2) when it comes out for consultation.
- (e) That this issue be raised with Ministers and local Members of Parliament early in 2009.