

9. PARKING ON RIVERBANKS AND PUBLIC NUISANCE

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PURPOSE OF REPORT

1. The purpose of this report is to inform the Spreydon/Heathcote Community Board on the issues surrounding parking on riverbanks with regard to degradation of the riverbanks and associated matters of public nuisance, in a report as requested by the Community Board 18 August 2009.

EXECUTIVE SUMMARY

2. Parking on riverbanks is causing some localised seasonal damage to Road Reserves and Parks Reserves adjacent to those riverbanks.

Currently, unauthorised vehicle movement and parking on Road Reserve is dealt with by the Enforcement Unit through the CCC Traffic and Parking Bylaw 2008 (and expected amendments). Unauthorised vehicle movement and parking on Parks Reserves is dealt with by the Park Rangers through the CCC Parks and Reserves Bylaw 2008.

3. The activities of whitebaiters on the riverbanks during whitebaiting season is also causing some localised degradation of the riverbank areas. These areas are generally designated Parks and Reserves, Road Reserve or Riverbank and varied sets of regulations and bylaws apply.
4. Council staff are amending procedures enabling Parking Enforcement officers to enforce the parking and vehicle movement provisions of the Parking Reserves Bylaw.
5. It is intended the Avon River/Otakaro (Central City) Masterplan together with the Mid-Heathcote River/Opawhao Linear Park Masterplan provide a structured method and design promoting long term protection of these areas.

FINANCIAL IMPLICATIONS

6. No additional funding will be required.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

7. Yes.

LEGAL CONSIDERATIONS

8. The pertinent legislation that applies to these issues includes:

Summary Offences Act

Under this act it is an offence to cause damage to property [Section 11 (1) Wilful Damage].

Land Transport Act 1998

Under this Act and amendment a "road" is defined to include "a place to which the public have access".

Land Transport (Road User) Rule 2004 (and 2009 amendment)

A driver must not drive along a footpath [Section 2 (13) Driving along footpath]

2009 Amendment – "A driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a roadway if he or she can stop, stand, or park it on the road margin without damaging ornamental grass plots, shrubs or flower beds laid out or planted on the margin" [Section 6.2 (1) parking vehicles off roadway].

New Zealand Bill of Rights Act 1990

“Everyone lawfully in New Zealand has the right to freedom of movement... in New Zealand”
[**Section 18**, (1) Freedom of movement].

CCC Parks and Reserves Bylaw 2008

Section 6, Behaviour in Reserves (1) No person may, without the permission of an Authorised Officer: (a) bury or disturb any thing in a reserve.

Section 8, Vehicles, Other Traffic, Mechanical Devices and Vessels

- (a) No person may take, ride or drive any vehicle into or on any reserve –
 - (i) except in areas where vehicles are allowed, such as driveways, parking areas or cycle tracks; or
 - (ii) unless permission has been granted by an Authorised Officer.
- (b) No person may drive or ride a vehicle within any reserve area where vehicles are allowed in a manner, which having regard to all the circumstances of the case, is or might be dangerous to the public or to any person.
- (c) No person may park any vehicle in any reserve except in a place set aside by the Council.

CCC Traffic and Parking Bylaw 2008

Section 9 Parking On Grass Berms or Verges (1) 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.

Traffic and Parking Bylaw 2008 – Amendment 2009

This amendment is the subject of a report to the Regulatory and Planning Committee advising an amendment to give Council a wider range of enforcement options.

Water Related Services Bylaw 2008, Section 37, Protection of Waterways

Unless authorised by the Council no person may:

- (d) Widen, deepen, make narrower or alter the course of any Waterway or interfere with the bank of any Waterway;
- (e) Remove trees, plants or vegetation from the banks, or disturb the banks of any Waterway.

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

9. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

- 10. Aligns with page 90 LTCCP, Enforcement and Inspections:
 - (a) Protect the public from hazards and nuisances;
 - (b) Enforce compliance with City Plan, legislation, bylaws and other regulations;
 - (c) Aligns with page 118 LTCCP, Neighbourhood Parks;
 - (d) Ensure that park design, development and maintenance is sustainable and timely.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

11. As above.

ALIGNMENT WITH STRATEGIES

12. The Avon River/Otakaro (Central City) Masterplan together with the Mid-Heathcote River/Opawhau Linear Park Masterplan chart the future development of these sections of the rivers.

Do the recommendations align with the Council's strategies?

13. Yes.

CONSULTATION FULFILMENT

14. Dialogue has been held with some residents holding strong feelings on damage to the riverbanks.

STAFF RECOMMENDATION

It is recommended that the Spreydon Heathcote Community Board receive this report for information purposes.

CHAIRPERSONS RECOMMENDATION

For discussion.

Various issues need to be considered including damage to river banks and grass, signage and enforcement.

BACKGROUND (THE ISSUES)

15. An issue of concern is the problem of vehicle damage to the riverbank. This happens occasionally but on a continuing basis. This damage, usually in the form of tyre marks and ruts, has been occurring over time and is the result of soft bearing areas of soil and grass adjacent to the road.
16. One result of these soft areas is the appearance of prominent wheel ruts left by motorists as they drive over the grass. Some of the damage is unintentional, caused by motorists mistaking the grass area for a hard surface and some of the damage is clearly intentional, caused by motorists who are "skylarking", or "hooning" in their cars. During whitebaiting season, whitebaiters are known to park their vehicles close to their "stands" on a regular basis.
17. While some damage to the grass reserve areas can be considered a matter of wear and tear, other damage is more serious. This damage has been happening to some degree on the Avon, the Styx and the Heathcote riverbanks. In previous years the damage was not as serious or so widespread. Over time there has been a substantial increase in the total numbers of vehicles registered for road use. One product of this increase has been an associated increase in reports of vehicle damage to riverbank areas. Driving habits have also changed, with some drivers exhibiting anti social behaviour with their cars.
18. Damage to riverbanks by vehicles varies from some soil and grass disturbance, which repairs naturally in a short timeframe, to more substantial damage which can involve expensive remedial work by Council contractors. Over previous months white baiters have caused concern due to their parking and fishing activities. Their vehicles are parked repeatedly in the same place and create tyre ruts. Some white baiters have been known to modify the profile of the riverbank in order to position and hold their nets more easily.

19. Vehicles often drive and park on riverbanks, grass berms and verges adjacent to the Avon, the Heathcote and the Styx. Various pieces of legislation apply to this practice.
 - (a) If a vehicle is driven or parked on a Parks Reserve, Council has the authority to move the driver and vehicle on. There is no right to drive or park a vehicle on a Reserve without authority;
 - (b) If a vehicle is parked on a grassed area that is designated a Road Reserve, then currently a driver is allowed to drive and park on that area unless specifically prohibited. A challenge for immediate enforcement arises in this situation because it is often difficult to ascertain which part of the grass verge is Road Reserve and which part is Parks Reserve or natural riverbank;
 - (c) If a driver intentionally damages the grassed areas of either a Parks or Road Reserve, then the provisions of the Summary Offences Act may apply. The difficulty with charging someone for the damage under the Summary Offences Act lies in identifying the vehicles and drivers.
20. The government has enacted the Land Transport (Road User) Amendment Rule 2009. This new law will make it an offence to drive across an "ornamental grass plot" (our grass verges and berms may fit in with this term). To take full advantage of this rule, Council may need to modify its parking bylaw. This bylaw amendment is currently under investigation and discussion with staff.
21. Some motorists may still choose to disobey the Land Transport (Road User) Rule 2004 (and 2009 amendment) and park in unauthorised areas.

Council options will then include:

- (a) Do nothing - this option involves least expense, but no positive outcome;
 - (b) Install bollards- a possibly expensive option considering the length of the river(s) that need protection. Bollards delineate the road boundary, but do not stop access to the reserve area;
 - (c) Install temporary measures such as waratahs and wire, which is less expensive in initial cost, but constant erection and dismantling involves repeated operational expenditure. Wire fences stop access to the riverbank area, but relocates the offending to a position on the banks where there is no fencing. An additional safety issue is the risk of injury to cyclists and motorcyclists with wire fencing, should a loss of vehicle control occur;
 - (d) Design a road, footpath and riverbank treatment that will provide a permanent solution such as that advocated in the Mid Heathcote/Opawaho Linear Park Masterplan;
 - (e) Enforce provisions of related bylaws, road rules and national legislation already in existence. The actual enforcement of CCC bylaws may be a laborious and costly process. There are issues of vehicle and driver/owner identification, cost of enforcement, time of staff to prepare prosecutions and application of an appropriate penalty. While prosecution is a last resort, the ability to prosecute if appropriate, is required to give the bylaw(s) force.
22. To mitigate damage to unimproved riverbanks:
 - (a) Regional Park Rangers and/or Parking Enforcement Officers will advise drivers of cars parked on Parks Reserve or Road Reserve of the parking regulations and, if appropriate, request they park their car on the road;
 - (b) Residents are encouraged to report instances of careless driving causing damage to the road Reserve (grass berms) to the Police;
 - (c) Staff will action appropriate remediation for those damaged riverbank areas reported to the Council Call Centre.