

7. HEARING PANEL REPORT ON THE TRAFFIC AND PARKING AND STOCK CONTROL BYLAWS

PURPOSE OF REPORT

1. This is a report of the Traffic and Parking Bylaw Hearing Panel. It summarises the submissions received on the proposed Traffic and Parking Bylaw and the Panel's responses. As a result of submissions, the Panel is recommending the adoption of two bylaws by Council: the revised Traffic and Parking Bylaw and a separate Stock Control Bylaw.²⁸
2. The proposed bylaws are attached to this report. The changes recommended by the Hearing Panel are indicated throughout. (Attachment 1, Attachment 2, Attachment 3, Attachment 4)

EXECUTIVE SUMMARY

3. On 13 March 2008, Council adopted the proposed Traffic and Parking Bylaw for consultation. Submissions on the proposed Bylaw were open from 29 March to 1 May 2008. 44 submissions were received. 16 people requested to be heard by the Hearing Panel in support of their submissions.²⁹ The hearings were held on 19 and 20 May and the panel deliberated from 20 May to 11 June.³⁰ The Panel was chaired by Councillor Sue Wells, and the panel members were Councillors Helen Broughton, Ngaire Button and Yani Johanson.
4. The purpose of the proposed Bylaw is to regulate and control traffic, parking and the movement of stock in such a way as to balance the competing demands on the road space, while maintaining a safe and efficient infrastructure. Most of the proposed Bylaw was based on the existing Christchurch City Council (CCC) and Banks Peninsula District Council (BPDC) bylaws.³¹ However, there were several new provisions, including clauses on heavy vehicles parking on residential streets; heavy vehicles using residential streets; vehicle removal; and a requirement for anyone moving dairy cows more than once per week along or across any road to obtain a stock movement permit.
5. The proposed Bylaw was based on the bylaw-making powers in sections 145 and 146 of the Local Government Act 2002, section 72 of the Transport Act 1962 and section 591A of the Local Government Act 1974. These Acts include a range of different bylaw-making powers, enforcement tools and penalties.
6. Of the 44 submissions received, five were from Community Boards, 12 were on behalf of groups or organisations, and 27 were from individual submitters. Most of the submissions focused on vehicles on grass berms and verges (9 submitters), heavy vehicles parking on residential streets (22 submitters), prohibited times on roads (five submitters) heavy vehicles using residential streets (10 submitters) and the stock control provisions (8 submitters).
7. 16 submitters asked to be heard by the Hearing Panel. Of these, six represented themselves, eight represented groups or organisations and two represented Community Boards. Four people who wanted to be heard failed to appear at the hearing.
8. The background section of this report outlines matters raised by submitters and the response of the Hearing Panel, including any subsequent changes to the Bylaw, as proposed. Attached to this report are the two bylaws being recommended to Council for adoption, with the changes highlighted.

OVERVIEW OF CHANGES TO THE BYLAW

9. The Hearing Panel deliberated on the issues raised in submissions, and as a result, made changes to the Bylaw now being recommended to Council. The most visible of these was redrafting the stock control portions of the proposed Bylaw as a stand-alone bylaw. However, a number of other changes were made to the Traffic and Parking Bylaw as a result of legal advice received by the Hearing Panel in the deliberations phase.

²⁸ The stock control matters that were contained in the proposed Traffic and Parking Bylaw, as consulted on, have been removed from the Traffic and Parking Bylaw now being recommended to Council. The stock control matters are now being recommended to Council as a separate, new bylaw: the Stock Control Bylaw.

²⁹ though four did not attend on the day of hearings.

³⁰ Altogether, the hearing panel met for 28hrs and 30mins

³¹ BPDC Traffic and Parking Bylaw 1998; CCC Traffic and Parking Bylaw 1991; BPDC Stock Control Bylaw 1994; BPDC Licences for Vehicle Stands on Streets

10. The Hearing Panel received legal advice during deliberations indicating that it was unable to go ahead with some of the clauses, as they had been consulted on. As a result of this advice, the Hearing Panel found it necessary to make changes to the Traffic and Parking Bylaw which were outside of the scope of submissions.³² It sought confirmation from counsel that it was acting in accordance with the Local Government Act 2002 in this regard, and such confirmation was received.
11. The main changes to the Traffic and Parking Bylaw are:
- amalgamating both the ‘vehicles on grass berms’ and ‘vehicles on grass verges’ clauses into a single new clause restricting parking on grass verges and berms
 - the ‘heavy vehicle parking on residential streets’ clause has been amended by removing the times, therefore allowing the times to be set as the context requires (a recommendation has also been made to develop a policy on the process for making decisions on where any restrictions are imposed)
 - removing the ‘heavy vehicles using residential streets’ clause, as section 70AA of the Transport Act 1962 already empowers the Council to restrict heavy vehicles from using streets (this does not need to be duplicated in the Bylaw)
 - the ‘caravans’ and ‘immobilised vehicles’ clauses have been amalgamated and altered – the clause now covers motorhomes and immobilised vehicles
 - the ‘displaying vehicles on streets’ clause has been altered by removing those parts of the clause that related to sale or exhibition, and it now focuses on restricting the use of the road for storage of vehicles in connection with a trade or business.
12. Other changes to the Traffic and Parking bylaw include:
- clarifying the penalties throughout the Bylaw, such as:
 - which breaches can result in an instant fine (infringement notice)
 - which breaches can result in prosecution
 - what the maximum penalty is on summary conviction
 - whether Council staff or the Police can enforce the provisions
 - clarifying that where the Council is imposing a stopping, standing or parking restriction, signs must be erected³³
 - clarifying which decisions/resolutions made by Council must be listed in a schedule to the Bylaw (ie, listed in the Bylaw itself) – these are ‘one way streets’ and ‘roads or traffic lanes restricted to specific classes of vehicles’.³⁴ This is required by the Transport Act 1962. The implication of this is that decisions on one way streets and special vehicle lanes now have to undergo the Special Consultative Procedure.
 - clauses that included the establishment and maintenance of registers have been altered to remove the requirement, for administrative simplicity. Two of the clauses proposing registers now have schedules (as above), as a result of legal advice.³⁵
13. The main changes to those parts of the proposed Traffic and Parking Bylaw that related to stock control are:
- the creation of a separate bylaw covering stock control issues
 - the purpose of the Stock Control Bylaw has been added – “to control the management and movement of stock on roads, in order to protect people, traffic and stock, while safeguarding the condition of the road”
 - clarification over which requirements relate to stock generally, and which relate only dairy cows – the form of the bylaw has been rearranged significantly to that consulted on to achieve this

³² The clauses in question relate to parking restrictions on grass verges and berms, and to schedules for one way streets and special vehicle lanes.

³³ Signage must comply with the Land Transport Rule: Traffic Control Devices 2004

³⁴ These are special vehicle lanes such as bus or cycle lanes

³⁵ A register is a way of capturing and recording decisions/resolutions made by Council, but does not legally form part of the Bylaw, so can be altered without undertaking a Special Consultative Procedure. A schedule is legally part of the Bylaw and cannot be altered with undertaking a Special Consultative Procedure.

- in relation to the use of the road by dairy cows, the changes are:
 - clarification that a stock movement permit is only required where a person moves dairy cows more than once in any week along or across any sealed road, whether or not the use is seasonal
 - the purpose of a stock movement permit has been clarified, including needing to show how the permit holder will ensure the safety of people, traffic and stock (such as the use of signs), and the means by which they will ensure the roadway is to be cleaned (to the Council's satisfaction)
 - the stock control permit expiry has been extended from two years to three years, subject to compliance with the permit
 - the signage requirements have been clarified in cases where a permit is not required - to alert road users to the presence of stock or the hazard caused by the faecal matter of dairy cows
 - the requirements relating to dairy cows now only apply to sealed roads, not to unsealed roads
 - the underpass requirement and graph have been removed
 - in relation to moving stock generally, the changes are:
 - signs warning road users about stock on the road now need to be placed 150m from the stock, and are only to be displayed when the stock is on the road
 - the '2000 vehicles per day' and the 'urban areas' restrictions have been altered so that they are clearer
 - stock being moving on unfenced roads are now exempted from the general stock movement requirements
 - the Bylaw now makes it clear that nothing in it applies to roads under the management of Transit New Zealand (ie State Highways)
 - a delegation clause was also added.
14. Three further pieces of work related to the bylaws are being recommended to Council by the Hearing Panel. These are the development of a Memorandum of Understanding with the New Zealand Police and the development of two operational policies. The operational policies relate to heavy vehicle parking on residential streets and prohibited and restricted roads for stock movement, including setting out the processes and matters to be taken into consideration in decision-making.
15. A number of other changes were recommended by the Panel. These can be found in the background section of this report and are highlighted in the attached Bylaws.
16. The Hearing Panel, in making these changes, was responding to submissions and legal advice, and was guided by a number of principles, including that bylaws must be:
- clear and certain
 - not unreasonable
 - not inconsistent with other law
 - not repugnant to the law, including common law.³⁶
17. Additionally, the Panel was mindful that bylaws should not cover matters which are already dealt with under other legislation.
18. The Hearing Panel has made a number of recommendations to Council as a result of the review of the Traffic and Parking Bylaw hearings and deliberations. These include directing the CEO undertake a review of the process leading to the development of the Traffic and Parking Bylaw, including the issues that arose during deliberations, and that the results of the review are reported back to Council within six months. Additionally, the Panel has recommended that the Council directs staff to report back quarterly on the implementation and enforcement of the Traffic and Parking Bylaw, including any requests for service that relate to issues covered by the Bylaw, in order to identify any issues that may arise and to monitor the implementation and enforcement of the Bylaw.

³⁶ This includes complying with any regulations, such as, in the case of the Traffic and Parking Bylaw, any applicable rules made under the Land Transport Act 1998.

LEGAL CONSIDERATIONS

19. The Special Consultative Procedure³⁷ took place from 29 March to 1 May 2008. The consultation documents were sent directly to a range of groups, organisations and individuals, as well as public notices appearing in relevant newspapers, and the consultation documents being made available at service centres, Council libraries and on the internet. Additionally, information sessions were held around the district for interested people to drop-in and talk to staff. Submissions were open from 29 March to 1 May 2008 and hearings were held on 19 and 20 May, which were open to the public.
20. A bylaw Hearing Panel has no decision-making powers, but can make recommendations to Council as a result of considering written and oral submissions.³⁸ The Council can then accept or reject those recommendations, as it sees fit. However, the Local Government Act states that the views presented during consultation should be received by the Council with an open mind and should be given "due consideration in decision-making".³⁹
21. The Local Government Act⁴⁰ requires that the Council give public notice of the making of a bylaw as soon as practicable after the bylaw is made. A recommendation has been made to this effect (see below)
22. It is appropriate to resolve that the Bylaw will come into effect on 1 July 2008, which is the date by which two of the bylaws being revoked by the new Bylaw would automatically expire.
23. 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 (in accordance with section 155 of the Local Government 2002).

HEARING PANEL RECOMMENDATIONS

The Hearing Panel recommends that the Council:

- (a) Resolve to adopt the Christchurch City Council Traffic and Parking Bylaw 2008, as amended, as attached.
- (b) Resolve to adopt the Christchurch City Council Stock Control Bylaw 2008, as amended, as attached.
- (c) Give public notice as soon as practicable, that the two Bylaws have been adopted by Council, that they come into effect on 1 July 2008, and that copies of the Bylaws will be made available.
- (d) Sends a copy of the Traffic and Parking Bylaw to the Minister of Transport within one week of the Bylaw being made, as required by section 72(4) of the Transport Act 1962.
- (d) Sends copies of the Bylaw to those people or organisations that made submissions, and sends a letter to those to whom the consultation notification was initially sent, advising them of the outcome.
- (e) Direct staff to begin work on developing a Memorandum of Understanding with the New Zealand Police.
- (f) 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.

³⁷ Section 83 of the Local Government Act 2002

³⁸ Clause 32 of Schedule 7 of the Local Government Act 2002 expressly prohibits the power to make a bylaw from being delegated

³⁹ Section 82(1)(e). This is also supported by the Council's Consultation Policy, which states: "we will receive presented views with an open mind and will give those views due consideration when making a decision".

⁴⁰ Section 157

- (g) 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.
- (h) Direct staff to prepare an operational policy relating to the clause 'stock droving prohibited/restricted routes' in the Stock Control Bylaw, including setting out the process and matters to be taken into consideration in decision-making.
- (i) Direct staff to undertake a review of the schedules to the Traffic and Parking Bylaw to ensure that they are up to date and correct, including any additions.
- (j) Direct staff to develop a process for adding further streets to the schedules in the Traffic and Parking Bylaw.
- (k) Direct the Chief Executive Officer to review the process leading to the development of the Traffic and Parking Bylaw and issues arising during deliberations, and to report back within six months.
- (l) Direct staff to report back quarterly on the implementation and enforcement of the Traffic and Parking Bylaw, including any requests for service.

[Note: attached to this report are two copies of the bylaw – a marked up copy (showing the changes to the proposed bylaw, as consulted on) and a clean copy (for adoption)]

RESPONSE TO SUBMISSIONS

24. Below is a summary of the written and oral submissions on the proposed Bylaw, followed by responses from the Hearing Panel on changes to the bylaws now being recommended to Council. The information below focuses first on traffic and parking issues, then on stock control issues.

TRAFFIC AND PARKING

25. Written submissions were focussed on:
- clause 5 – parking restrictions (3)
 - clause 7 – vehicles on grass berms (7)
 - clause 8 – vehicles on grass verges (7)
 - clause 9 – heavy vehicles parking on residential streets (22)
 - clause 13 – one way streets (2)
 - clause 14 – roads or traffic lanes restricted to specific classes of vehicles (1)
 - clause 16 – prohibited times on roads (5)
 - clause 17 – heavy vehicles using residential streets (10)
 - clause 23 – caravans (2)
 - clause 24 – immobilised/immobile vehicles (1)
 - clause 25 – displaying vehicles on street (3)
 - clause 35 – materials/debris on roads and damage to roads (2)
 - clause 36 – vehicle removal (1)
 - clause 37 – exempted vehicles (1)

VEHICLES ON GRASS BERMS AND VERGES

26. Seven submitters commented on the proposal to control vehicles on grass berms and verges. Many submitters referred to specific streets or areas,⁴¹ with some supportive of the restrictions proposed and some opposed. Other comments included:
- confusion about the difference between berms and verges
 - the difficulty of not parking on verges in some narrow streets (eg on hills), where it may be safer to park partly or wholly on the berm or verge
 - conversely, the dangers created by people parking on the berm or verge narrowing the road for other traffic
 - the inconsistencies between roads throughout the district – arguing that the restrictions should not to apply in rural or semi-rural areas where berms or verges may be wider
 - comments on horse riders using verges, including unloading horses from floats
 - the common practice of parking on the berm or verge during events, such as cycling or cross country events
 - the impracticality of listing streets on a register where parking on verges would be authorised
 - the ride on mowers unintentionally being prohibited by the bylaw on grass berms and verges.

Panel response:

27. The Hearing Panel has made a significant change to the clauses, as consulted on. The clauses prohibited driving vehicles or parking vehicles on grass berms, and prohibited driving vehicles or parking vehicles on grass verges in urban areas, unless, those verges were listed on a register. These two clauses have been amalgamated and replaced in the bylaw now being recommended to Council. The new wording is as follows:

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.

⁴¹ Including Clifton Hill, Hagley Park, Hulverstone Drive, Halswell Quarry Park, Old Tai Tapu Road and Akaroa

28. The Hearing Panel is recommending this change as:

- the clauses, as consulted on, covered both the driving of vehicles and the parking of vehicles
- there is a provision in the Road User Rule⁴² (which the Police can enforce) preventing people from driving on lawns, gardens or other cultivated land. The bylaw does not need to duplicate this, so the restriction on driving vehicles on both berms and verges can be removed, as it is already provided for by the Road User Rule.
- The clause, as consulted, provided a blanket ban for vehicles on grass berms, and a register of where vehicles were authorised to park on grass verges - however, the Hearing Panel received legal advice during deliberations indicating that where the Council is imposing parking, standing or stopping restrictions, it must have signage to inform people, so a blanket ban is not possible and a register is not needed.
- The clauses have therefore been amalgamated into one and now only cover parking on grass berms and verges, subject to the erection of prescribed signs.⁴³

HEAVY VEHICLES PARKING ON RESIDENTIAL STREETS

29. Twenty-two submitters commented on the proposal to restrict parking on specified residential streets. The clause, as proposed, allowed the Council to prohibit the parking of heavy vehicles on specified streets in residential areas between 9pm and 7am.
30. Seventeen submitters were supportive of the proposal and outlined problems in specific streets, including: traffic safety, visibility for other road users (including pedestrians), noise issues, reducing property values, damage to roads, small businesses operating from residential properties, reducing amenity values and neighbourhood character, trucks parking on corners, and drivers using the road to store their vehicles.⁴⁴ These submitters were either representing themselves or their neighbourhood or street. Some of the submitters wanted tighter controls, including complete bans (rather than overnight bans, as proposed). Many argued that it was a problem during the day, as well as at night.
31. Three submitters opposed the proposal - two trucking industry groups and one bus operator.⁴⁵ One trucking industry group argued that restricting parking on residential streets would impose a direct cost on truck drivers, owners or operators, as they would have to pay for commercial storage, and that driving to and from this storage would count as driving hours, reducing the driving (and earning time) of drivers. The other trucking industry group raised concerns about the significance of the problem and the lack of evidence provided in reports to Council; the lack of cost-benefit analysis of imposing restrictions; the implications of a prohibition overnight for things such as truck maintenance; and they requested a compromise of allowing trucks to park for up to one hour, rather than a total ban on stopping, standing or parking.
32. The bus operator opposed the proposal, arguing that bus services may be affected by this proposal (both in terms of routes and in terms of needing to lay-over in some suburbs in between scheduled routes). They suggested that the Council needs to consider special provisions for the parking of public transport vehicles, and that public transport vehicles should be exempted from any restrictions, together with city-contracted rubbish removal vehicles.
33. Many of the submitters sought clarification on the process that would be used to decide which streets had restrictions.

⁴² Land Transport (Road User) Rule 2004: clause 2.14 - Driving on lawn, garden, or other cultivation: A driver must not drive a motor vehicle on a lawn, garden, or other cultivation adjacent to, or forming part of, a road.

⁴³ Signs are prescribed in the Land Transport Rule: Traffic Control Devices 2004.

⁴⁴ Including Maryhill Ave, Warren Crescent, Bentley Street, Farquhars Road and Buchanans Road.

⁴⁵ New Zealand Road Transport Association (Region 4), New Zealand Trucking Association and RedBus Limited

Panel response

34. The Hearing Panel has retained the clause, but has removed the time restriction (no parking on specified streets between 9pm and 7am), as a number of submitters opposed the timeframe, for varying reasons. By removing the timeframe, it will allow restrictions to be imposed based on the identified problem and the context, providing greater flexibility and responsiveness.
35. The Panel has also recommended that an operational policy is developed to set out the process for restricting the parking of heavy vehicles in residential streets, and as well as matters to be taken into consideration in decision-making. This will be presented to Council for consideration and adoption by resolution.
36. The clauses have been reworded to remove the requirement for a register (as there is no need to establish or maintain a register), and to make it clear that any restrictions would have to have clear signage, in accordance with the Land Transport Rule: Traffic Control Devices 2004.

ONE WAY STREETS AND SPECIAL VEHICLE LANES

37. Two submitters commented on the one way streets clause, both suggesting that consultation should be undertaken before a street is added to the one way streets register.
38. One submitter commented on the special vehicle lanes clause (roads or traffic lanes restricted to specific classes of vehicles). The concern raised by the submitter was that the types of lanes or special vehicles were not explicitly stated in the bylaw, which could mean that heavy vehicles could be restricted. This was of concern to the submitter (a trucking industry group), which suggested that the types of lanes or specific classes of vehicles this clause was providing for should be made explicit.

Panel response

39. The Panel has altered the clauses on one way streets and special vehicle lanes by removing the reference to a register and replacing it with the requirement to add one way streets and special vehicle lanes to a schedule, as a result of legal advice received during deliberations.⁴⁶ The Transport Act 1962 requires that both one way streets and any special vehicle lanes are specified in the bylaw itself. A schedule is legally part of a bylaw. As one-way streets and special vehicle lanes are part of the bylaw, any future changes will have to undergo the full Special Consultative Procedure, as outlined in the Local Government Act 2002.
40. The clause on special vehicle lanes (roads or traffic lanes restricted to specific classes of vehicles) now lists examples of the restrictions intended, such as cycle or bus lanes.

PROHIBITED TIMES ON ROADS

41. Five submitters commented on the clause on prohibited times on roads. Three submitters were generally supportive of the provision. One submitter argued that there were other ways of addressing the problem of boy racers, and that as long as a vehicle is registered and warranted, then no access restrictions should apply.
42. The New Zealand Police suggested altering the wording of the exemption to allow Police (and other emergency services) 'acting in the execution of duty', not just when acting in an emergency situation. Another submitter requested an exemption for passenger service vehicles (eg taxis).

⁴⁶ The proposed Bylaw, as consulted on, included the requirement to keep registers for certain issues. However, the Hearing Panel received legal advice during deliberations indicating that both one way streets and special vehicle lanes must be specified in the bylaw itself. The Panel has therefore altered the Bylaw in this regard. The proposed Bylaw went out for consultation with registers, which were to have the existing schedules from our current Bylaws transferred directly into them, and would have then been updated administratively. However, because the information must now be in a schedule, which is legally part of the Bylaw, any amendments must undergo a full Special Consultative Procedure in accordance with the Local Government Act 2002. The Panel acknowledges that the schedules need to be reviewed to ensure that they are up to date and correct, and has made a recommendation to Council to direct staff to undertake this review. As well as amending any errors, the schedules will have to be amended to include all cycle lanes.

Panel response

43. The Hearing Panel has retained the clause, but has made a number of alterations, including:
- removing the references to a 'Prohibited Times on Roads for Vehicles below 3,500kg Register', as a register is not required⁴⁷
 - adding 'acting in the execution of duty' to the exemptions clauses.
44. The Panel has not taken up the suggestion of exempting passenger services vehicles as there is already an exemption in the Bylaw for vehicles "conveying the owner or occupier of any land having road frontage to the road described or the owner or occupier's bona fide visitors".
45. The Hearing Panel has recommended that Council direct staff to prepare an operational policy relating to prohibited times on roads, including setting out the process and matters to be taken into consideration in decision-making. This is to ensure that a robust process is set down and followed for any future decisions on prohibited times on roads. The operational policy will be presented to Council for consideration and adoption by resolution.

HEAVY VEHICLES USING RESIDENTIAL STREETS

46. Ten submitters commented on the clause covering heavy vehicles using residential streets. Some submitters were in support of the clause, others were opposed, and some submissions suggested alterations to the clause.
47. The New Zealand Police commented on the signage currently used to limit heavy vehicles using some streets, suggesting that it is confusing, rather than clear, and that this could be improved, including adding 'vehicles over 3,500kg' to any signage.
48. Some submitters raised concerns about trucks and heavy vehicles in general, including: the revving noise from heavy vehicles being started in the early hours of the morning; noise experienced in steep or hilly areas; vibrations being felt in houses from heavy vehicles; heavy vehicles using crescents and culs de sac where other options are available; and damage to roads that do not appear to be intended for heavy vehicles.
49. One submitter suggested exemptions to any restrictions for public transport vehicles, chartered public transport vehicles and city-contracted rubbish removal vehicles.
50. Concerns were raised by a group representing freight transporters about the proposal having the potential to compromise the transport network; that the process for streets having restrictions imposed is not clear in terms of consultation; and that any restrictions should be a last resort. The submission strongly urged the Council to adopt a 'solution-focused' approach, where regulation (or a prohibition) is a last resort.
51. The Road Transport Association raised concerns about the clause, arguing it is unnecessarily restrictive, and that transport operators use the most appropriate and efficient routes, which do not tend to include residential streets, unless deliveries require it. The Association argues that other options are open to the Council to restrict heavy vehicles, including traffic calming and narrowing streets. They are concerned at how many roads could end up with restrictions and the effect this might have on the industry, including increasing costs and environmental impacts and reducing efficiency. The Association also argued that industry should be consulted where particular problems arise, in order to find acceptable solutions, before a ban is imposed.

⁴⁷ A number of registers were proposed in the bylaw; however, the Hearing Panel has made a decision to consistently remove them, as they are not required. They had been intended as an administrative tool. Decisions such as those relating to Prohibited Times on Roads result in the provision of signage, so there is no need for a register. Resolutions establishing or altering Prohibited Times on Roads are subject to normal local government record keeping requirements.

Panel response

52. The Hearing Panel has removed the clause on heavy vehicles using residential streets from the Bylaw being recommended to Council for adoption. This is because section 70AA of the Transport Act 1962 already empowers the Council to restrict heavy vehicles from using roads. The Council will continue to use this Transport Act provision to impose restrictions where they are required. The Bylaw does not need to duplicate what is already provided for by the Transport Act.
53. While the Transport Act does not set out a process for a local authority using section 70AA to restrict heavy vehicles from using certain streets, the Local Government Act 2002, to which all local government decision-making must comply, does place obligations on councils to weigh options, consider any costs, to consult, etc. Were any restrictions to be placed on streets, Council would need to comply with the Local Government Act in this regard.

USE OF WASTETAKER BINS, RECEPTACLES, OR ANY OTHER OBJECT

54. A submission was made by the New Zealand Police, who suggested that in cases where a wastetaker bin, receptacle or other object is presenting a safety concern, the Bylaw should allow the Council to choose to *either* remove it, *or* to make it safe. The Bylaw, as consulted on, allowed the Council to remove an obstruction, but did not specifically provide for the option of making it safe – such as through the use of reflective devices (eg road cones). The Police also submitted that costs should be able to be recovered.

Panel response

55. The Hearing Panel has altered the Bylaw accordingly, so that it is now clear that the Council can either remove or make a wastetaker bin, receptacle or other object safe if it is causing a safety concern, and can cover costs for this.

CARAVANS, MOTORHOMES AND IMMOBILISED VEHICLES

56. Four submissions were made on these issues – two on caravans and one on immobilised/immobile vehicles. One submitter objected to the clause on caravans completely, one submitter suggested there was an inconsistency between the caravan clause in the proposed Traffic and Parking Bylaw and a clause in the proposed Public Places Bylaw, and another submitter suggested clarifying the immobilised vehicle clause so that mechanical immobilisation was excluded.

Panel response

57. The Hearing Panel has amalgamated and altered the clauses on caravans and immobilised/immobile vehicles. A single clause now covers both motorhomes and immobilised/immobile vehicles, preventing them from being left on the road for more than seven continuous days.
58. The clause on caravans was removed, as there is already a Road User Rule which prevents trailers from being left on the road for more than seven continuous days.⁴⁸ A caravan comes within the definition of trailer in the Road User Rule.

DISPLAYING VEHICLES ON STREET

59. Three submissions were made on the 'displaying vehicles on streets' clause. The clause, as consulted on, covered both sale or exhibition, and storage, on the road in connection with any trade or business. Two submitters objected to the inclusion of sale or exhibition, arguing that this was very broad and would capture community events being advertised, all signwritten vehicles, and was not justified as a restriction. Another submitter argued that 'displaying' and 'storage' were not defined.

⁴⁸ Land Transport (Road User) Rule 2004: clause 6.19: Parking trailers on roadway. Under the clause, no one may leave a trailer on a road for more than 7 days without written permission.

Panel response

60. The Hearing Panel has amended the 'displaying vehicles on streets' clause to focus on restricting the use of the road for storage or business purposes. The revised clause does not allow anyone to leave a vehicle on a road for the purpose of storage in connection with their trade or business, unless they have the prior written approval of any authorised officer.
61. Restrictions on advertising or other commercial activities on roads and other public places are covered by the 'commercial activities' clause of the Public Places Bylaw. The Panel was of the view that it could be confusing to contain provisions relating to signage in both the Traffic and Parking Bylaw and the Public Places Bylaw.

MATERIALS/DEBRIS ON ROADS AND DAMAGE TO ROADS

62. Two submissions were received on this clause, both in support of the proposal, but suggesting that the condition of the road is ascertained before development starts. The comments were made in relation to an area where the submitters believe property developers are damaging roads through the use of heavy vehicles and machinery, in excess of what would be accepted as normal wear and tear. The submitters both argue that the cost of wear and tear by developers should be borne by the developer, not by ratepayers.

Panel response

63. This issue is beyond the scope of the Traffic and Parking Bylaw's coverage. The Hearing Panel has referred the submission and its suggestions to the appropriate Council staff.

EXEMPTED VEHICLES

64. One submission suggested the exempted vehicles clause was too narrow and that it should be widened to include all vehicles being used in an emergency.

Panel response

65. The Hearing Panel has altered the exempted vehicles clause to exempt emergency vehicles, vehicles used by parking wardens/officers and enforcement officers, when the vehicles are being used "in the execution of duty". This also reflects the submission of the New Zealand Police in relation to the Prohibited Times on Roads clause. The exemption clauses are now consistent across the bylaw in terms of the use of emergency vehicles. Additionally, the clause in the Bylaw on defences states that "it is a defence to any person charged with a breach of this Bylaw if it is proved that the act complained of was done in an emergency".

OTHER CHANGES TO THE TRAFFIC AND PARKING BYLAW, AS CONSULTED

66. The Hearing Panel has made number of other changes to the Bylaw, including clarifying the powers under which the clauses in the Bylaw have been made, in order to be clear about the enforcement powers and the applicable penalties.
 - all parking restrictions in the Bylaw are made under the Transport Act 1962; parking restrictions are enforceable by the Council's parking wardens and the Police; and a breach of parking restriction can result in an instant fine (infringement notice).
 - any moving vehicle restrictions in the Bylaw are made under either the Transport Act 1962, the Local Government Act 1974 or the Local Government Act 2002; moving vehicle offences are enforceable by the Police; the Police can issue instant fines (infringement notices) or can chose to take a prosecution
 - all other clauses in the Bylaw are made under the Local Government Act 2002 and are enforceable by the Council.
 - The maximum fine on summary conviction (as a result of a prosecution) varies depending on the Act the clause was made under – for the Transport Act 1962, the maximum fine is \$500; for the Local Government Act 1974, the maximum fine is \$500; and for the Local Government Act 2002, the maximum fine is \$20,000.

67. Two additional matters that have arisen during the examination of the Bylaw and its associated issues, are, firstly, the need to develop a Memorandum of Understanding with the New Zealand Police on the enforcement matters related to the Traffic and Parking Bylaw, and secondly, the need to update and correct any errors in the schedules to the Bylaw.⁴⁹ Recommendations to this effect have been made in this report.

STOCK CONTROL

68. There were eight submissions on those sections of the proposed Traffic and Parking Bylaw that related to stock control. The written submissions were focussed on:
- clause 28 – restriction on movement of livestock (7)
 - clause 29 – general conditions for droving of livestock (3)
 - clause 30 – removal of faecal matter from road (4)
 - clause 31 – animals or stock in a public place (1)
 - clause 32 – stock droving prohibited/restricted routes register (1)
 - clause 39 – penalties (1)

GENERAL COMMENTS FROM THE HEARING PANEL ON STOCK CONTROL

69. Concerns were raised by some submitters about the inclusion of stock control issues within the Traffic and Parking Bylaw. Submitters were concerned that people may not look to the Traffic and Parking Bylaw to find out if there were restrictions on the movement of stock, and that it should form its own, separate bylaw. The Hearing Panel agreed with this, and the stock control portions of the proposed Traffic and Parking Bylaw have been separated out and will now operate as a stand-alone bylaw.
70. In redrafting the stock control portions of the Traffic and Parking Bylaw, the Hearing Panel has added an objective: “to control the management and movement of stock on roads, in order to protect people, traffic and stock, while safeguarding the condition of the road”, making it clear what the bylaw is intended to manage.
71. Some submitters suggested that the Bylaw, as consulted on, was unclear in terms which requirements applied to which issues⁵⁰. The Hearing Panel has recommended changes to clarify general conditions, and what conditions only relate to dairy cows. As a result, the stock control portion of the Bylaw, as consulted on, has been significantly rearranged, in the interests of clarity.

RESTRICTION ON MOVEMENT OF LIVESTOCK, GENERAL CONDITIONS FOR DROVING OF STOCK, AND REMOVAL OF FAECAL MATTER FROM ROAD

72. As mentioned above, the clauses:

- restriction on movement of livestock
- general conditions for droving of stock, and
- removal of faecal matter from road

have been rearranged and condensed into two new replacement clauses:

- general conditions for the movement of stock on roads, and
- conditions for the movement of dairy cows on roads.

⁴⁹ As previously mentioned, the schedules cover one way streets and special vehicle lanes

⁵⁰ For example, what conditions related to all stock, and what conditions only related to dairy cows. Or in what situations a permit was required, and what purpose a permit would serve.

73. Seven submissions were made on the 'restriction on movement of livestock' and the 'general conditions for droving of stock' clauses. Generally, submissions covered the following issues:
- concerns about restricting the use of roads by farmers where roads have been used for generations
 - wanting to see a tightening up on restrictions imposed on dairy farmers using the road (particularly in relation to faecal matter, damage to roads, damage to cars, frequency of use, signage, traffic dangers, etc)
 - concerns about the restriction on the use of roads with more than 2000 vehicle per day, including how these roads would be identified, and whether the Bylaw applied to State Highways
 - the requirement to shut gates of neighbouring properties when moving stock the complexity and applicability of the underpass requirement and graph
 - concerns about the purpose of and need for a stock control permit, a permit only being valid for two years, and the costs of getting a permit
 - concerns about the development of the prohibited/restricted roads register and the process for establishing the register in relation to consultation and appeals.
74. Submissions indicated that dairy cows cause more problems than other stock, as:
- they are usually moved twice a day during milking season, sometimes going along or across a road four times a day (to milking and back, twice)
 - their manure is more plentiful and more liquid than other stock, due to their feed
 - they tend to be stressed and therefore defecate more frequently than other stock.

GENERAL CONDITIONS FOR THE MOVEMENT OF STOCK ON ROADS

SIGNAGE

75. One submitter raised concerns about signs not being appropriately displayed to warn road users about stock on the road, where either signs were not visible or they were displayed permanently (ie regardless of whether stock were using the road at the time or not) and were therefore not effective.

Panel response

76. The requirement to display appropriate signage when moving stock along or across roads has been clarified. Where stock are being moved *across* the road, signs must be placed 150 metres before and after the stock to warn motorists. Where stock are being moved *along* the road, signs must be placed 150 metres before and after where the stock will enter and exit the road, as well as 150 metres preceding and ahead of the stock, and being moved in relation to the stock. In addition, an appropriate sign must be attached to a vehicle moving ahead of or behind the stock, to warn motorists. A clause has also been added to clarify that temporary signs warning motorists about stock on the road are only to be displayed when the road is being moved to use stock.

STOCK IN URBAN AREAS AND ON BUSY ROADS

77. Submitters raised concerns that about the clause restricting the movement of stock on roads with an average daily vehicle count of over 2000 vehicles. Concerns focused on the State Highways and how people would tell which roads had an average count of over 2000 vehicles. Including roads (such as the summit road) that may have a high volume of traffic on some parts of the road, but a very low volume on other parts. Additionally, concerns were raised about the urban areas specified in the proposed Bylaw in terms of the lack of clarity of where the restrictions stopped and started.

Panel response

78. The wording on moving stock in urban areas and on busy roads has been clarified. The new wording prevents anyone from moving stock in 'areas that could reasonably be described as being part of a city, town or settlement' or on any road 'that has a high volume of traffic', without the prior written consent of an authorised officer.⁵¹
79. Additionally, a clause has been added at the start of the Bylaw to clarify that the nothing in the Bylaw applies on roads under the care, control or management of Transit New Zealand, unless the Council and Transit New Zealand have entered into a formal agreement for the control of stock on those roads.

UNFENCED ROADS

80. Submitters argued that there are roads on the Peninsula (infrequently used by the public) that run through private farmland, where there is no fencing on either side of the road, the movement of stock is controlled by cattlestops or gates, and stock roam freely.⁵² In order to drive on such roads, road users would have to open gates or drive over cattlestops. These roads are clearly different from other roads, road users should be on the alert for wandering stock and due care should be taken.

Panel response

81. A definition of unfenced roads has been added to the Bylaw – "a road that is not fully fenced, where stock are controlled by cattlestops or gates".⁵³ A subsequent sub clause has been added to the 'General Conditions for the Movement of Stock on Roads' clause, exempting unfenced roads from the requirements in that clause, as stock wander freely on and around unfenced roads.

SHUTTING GATES

82. Nothing has changed in relation to the requirement to shut neighbouring gates when moving stock long the road, in order to prevent the stock from entering neighbours' properties, as the Panel views the requirements in the Bylaw, as consulted, to be appropriate.

CONDITIONS FOR THE MOVEMENT OF DAIRY COWS ON ROADS

STOCK MOVEMENT PERMIT

83. Submissions suggested that the Bylaw was unclear as to when a permit was required and what a permit was for. Some submitters argued that a permit would serve no purpose. Other submitters commented on the duration of the permit, arguing that two years was too short. Some submissions raised concerns about the cost of permits.
84. Submitters expressed concerns about the condition of roads where dairy cows cross regularly, including damage to their cars from faecal matter and the lack of adequate signage to warn road users of both stock and the slipperiness of the road surface.

⁵¹ The clause, as consulted on prohibited the movement of stock in urban areas (described as Akaroa, Christchurch, Governor's Bay, Diamond Harbour and Lyttelton) , or on roads with an average daily traffic count of 2000 vehicles per day, or more.

⁵² Such as paper roads

⁵³ Such roads may be sealed or unsealed – the description of an unfenced road relates to the presence of gates or cattlestops across the road.

Panel response

85. The Bylaw retains the requirement for a permit in relation to dairy cows, but now makes it clear that a stock movement permit is required where a person moves dairy cows along or across a sealed road more than once in any week, whether or not the use is seasonal. The Bylaw now also states that a stock movement permit must contain the means by which the permit holder will ensure the safety of road users (such as through the erection of signage) and how the permit holder will ensure the roadway is cleaned of faecal matter. Schedule A of the proposed Bylaw, which contained the basic terms of the permit, has been removed, and the terms of the permit have been shifted into sub clause 7(3) of the Bylaw.
86. The duration of the permit has been extended to from two years to three years, subject to compliance with the permit. Additionally, any previous approvals will continue in force, as long as they comply with the new Bylaw. A new clause has been added indicating that though the Bylaw comes into force on 1 July 2008, stock movement permits will not be required until 1 February 2009, in order to allow stock movement permits to be developed and considered by the Council.
87. There is no cost for a stock movement permit specified in the Bylaw itself. This is because the cost of seeking a permit (if any) is set under the Local Government Act 2002. The fee for a permit (if any) can only recover costs.

FAECAL MATTER ON ROADS

88. The clause on removing faecal matter from roads elicited four submissions. Two submissions raised concerns about the condition of a particular road in Banks Peninsula, and wanted tighter restrictions on the use of the road by dairy farmers. Two other submissions argued that the requirement to clean the road of faecal matter within 30 minutes was impractical when moving stock along the road or across a road, whether or not for milking.

Panel response

89. As outlined previously, the requirements relating to the control of dairy cow faecal matter on roads has been clarified in the Bylaw in relation to stock movement permits and their purpose. The circumstances in which a permit is required has been clarified, and the purpose of a permit has also been specified.⁵⁴
90. In cases where a permit is not required,⁵⁵ but a person is moving dairy cows along or across a road, the conditions of that use have also been included in the Bylaw.⁵⁶ The timeframe for cleaning the road has been extended from 30 minutes to 60 minutes so that it is more practical, and it is now clear that the timeframe begins at the conclusion of the movement or milking.

UNDERPASS ASSESSMENT

91. A number of submitters raised concerns about the applicability and appropriateness of the underpass graph and assessment requirement to activities within Christchurch district. Submissions suggested the graph and formula were confusing, and that they had been developed for the Waikato region, where dairying, large herds and flat land were all more common than on the Peninsula.

Panel response

92. The underpass assessment requirement and the graph have been removed from the Bylaw.

⁵⁴ That is, a permit must state how the dairy farmer will ensure the safety of road users (such as through the erection of signage) and how they will ensure the roadway is cleaned of faecal matter (to the Council's satisfaction).

⁵⁵ A permit is required where a person moves dairy cows along or across a sealed road more than once in any week, whether or not the use is seasonal.

⁵⁶ These requirements relate to the time within which the road must be cleaned of faecal matter after the completion of milking or the moving of the cows, and the requirements for signage to warn road users of stock being on the road, or of the road surface being slippery or hazardous.

STOCK DROVING PROHIBITED/RESTRICTED ROUTES REGISTER

93. Submitters raised concerns about the process for roads being added to the Stock Driving Prohibited/Restricted Routes Register, including emphasising the importance of consultation on any decisions.

Panel response

94. Nothing in the bylaw has been altered in relation to the establishment of prohibited/restricted roads, as the Bylaw itself does not set out the process.
95. However, a recommendation has been made to Council asking staff to prepare an operational policy on prohibited and restricted roads for stock movement, including setting out the process and matters to be taken into consideration in decision-making.⁵⁷ This will be presented to Council for consideration and adoption by resolution.

OTHER CHANGES TO THE STOCK CONTROL PORTIONS OF THE BYLAW, AS CONSULTED

96. The Hearing Panel has made a number of other changes to the Bylaw. These changes include:
- Impounding Act
 - the Bylaw (in the application section) refers to the Impounding Act 1955, which covers wandering stock, stock in public places, stock on neighbouring properties, etc. The clauses in the Bylaw which duplicate the coverage of the Impounding Act have been removed, as they do not need to be in the Bylaw
 - Delegation
 - a clause has been added to delegate decision-making in the Bylaw to the Chief Executive in instances where the written permission of the Council is required
 - Dispensation
 - the clause on applying to the Council for a temporary dispensation has been removed, as this is already provided for in the General Bylaw, which forms part of all Bylaws made by the Christchurch City Council
 - Stock Routes
 - the clause on the Council establishing a Stock Driving Routes Register has been removed, as stock routes already exist and do not need to be declared by resolutions of the Council. Additionally, some provisions in the Bylaw now only apply to sealed roads (such as the requirement to remove dairy cow faecal matter), and unfenced roads have specifically been exempted from the requirements relating to the movement of stock on roads
 - Revocations and savings
 - any approval, permit or other act of authority given under the BPDC Stock Control Bylaw 1994 No. 1 will continue to have full force and effect for the purposes of the new Bylaw, but must comply with the new Bylaw.

⁵⁷ Any decision-making by the Council must comply with the Local Government Act 2002, which requires the analysis of options, consultation, etc. Roads would only be added to the Register by Council resolution, after a consultation process and an assessment of other options for addressing the identified issues.