

### 13. REPORT OF THE HEARINGS PANEL ON THE PROPOSED CHRISTCHURCH CITY COUNCIL CRUISING BYLAW 2010

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#### PURPOSE OF REPORT

1. This is the report of the Proposed Christchurch City Council Cruising Bylaw Hearing Panel (the Panel). It summarises the submissions received on the Proposed Cruising Bylaw 2010 (the Bylaw) and contains recommendations from the Panel altering the Bylaw in certain respects. The Bylaw (with the recommended changes highlighted) is attached to this report (**Attachment 1**).
2. The report recommends the adoption of the Proposed Christchurch City Council Cruising Bylaw 2010, as attached (**Attachment 2**).

#### EXECUTIVE SUMMARY

3. A newly created bylaw-making power, introduced by the Land Transport (Enforcement Powers) Amendment Act 2009 into the Land Transport Act 1998, enables the Council to make bylaws for controlling, restricting or prohibiting cruising specifically. This includes the power to specify the section of road or roads on which cruising is controlled, restricted or prohibited. Section 22AB(3) of the Act also specifies that a cruising bylaw may leave any matter or thing to be regulated, controlled, or prohibited by the Council by resolution generally, for any specified classes of case, or in a particular case.
4. At its meeting of 11 February 2010, Council adopted the Proposed Cruising Bylaw 2010 for consultation. Submissions were received from 18 February 2010 and until 25 March 2010. There were 32 submissions received within this timeframe and another four late submissions tabled at the hearing, with four requesting to be heard by the Hearing Panel.<sup>1</sup> The hearings and consideration of all submissions were undertaken on 9 April 2010. The panel was chaired by Mayor Bob Parker and all Councillors were Panel members.
5. The purpose of the Bylaw is to prohibit cruising<sup>2</sup> in Christchurch City area on certain roads at specified days and times. Council consulted on proposals to resolve that roads where cruising is prohibited are all multi-lane roads under the control of the Christchurch City Council, and on the whole of Main Road (from Ferry Road to Marriner Street, Sumner) and all of the Esplanade (Sumner). New Zealand Transport Authority (NZTA) has advised Council can be delegated the authority to apply cruising bylaw provisions to NZTA administered roads should any anti-social road user issues arise necessitating this action.
6. The Council proposed instating the bylaw on the grounds that an examination under section 155 of the Local Government Act 2002 (LGA02) indicated that the problems associated with cruising activity as defined in the Land Transport Act 1998 could be controlled most appropriately through a bylaw, albeit recognising a bylaw would not present a total solution to those problems. The Traffic and Parking Bylaw 2008 has clause 15 relating to prohibited times on roads, and the Bylaw clarified the purpose of this clause for effective enforcement.
7. Through consultation with the Police, the Council determined that the Bylaw contain the following:
  - (a) The bylaw should apply to all multi-lane roads in the city; and on the whole of Main Road (from Ferry Road to Marriner Street, Sumner) and all of Esplanade, Sumner;
  - (b) The bylaw should empower the Council to determine by resolution the time period that must elapse between repeated use of a section of road by a driver to avoid being regarded as cruising; and,

<sup>1</sup> Anthony Rohan, Scott Lowan (Southern Car Culture), Inspector Al Stewart (NZ Police), Riccarton/Wigram Community Board (who later withdrew the request to appear)

<sup>2</sup> Cruising means driving repeatedly in the same direction over the same section of a road in a motor vehicle in a manner that—(a) draws attention to the power or sound of the engine of the motor vehicle being driven; or (b) creates a convoy that— (i) is formed otherwise than in trade; and (ii) impedes traffic flow]

- (c) The bylaw should empower the Council to determine by resolution the days and times in which cruising is prohibited;\
- (d) The bylaw should empower the Council to determine by resolution that other roads, on the days and at the times specified in the resolution, can also be subject to a prohibition on cruising Council has been consulting on proposals to resolve that 60 minutes be the period that must elapse between repeated use of a section of road for the driver to avoid being regarded as cruising;
- (e) In addition, consultation has been undertaken on proposals to prohibit cruising on the following days and times:
- (i) Thursday to Friday: 10pm – 5am;
  - (ii) Friday to Saturday: 10pm – 5am;
  - (iii) Saturday to Sunday: 10pm – 5am;
  - (iv) Sunday to Monday: 10pm – 5am;
  - (v) Every statutory holiday – commencing at 10pm on the day preceding the statutory holiday and ending at 5am on the statutory holiday.

8. Before making a decision the Council considered four options under which it might control cruising activity. Three options were for bylaws in various forms made under the Land Transport Act 1998, and the fourth option recommended that no bylaw be adopted. The Council adopted the third option as its preferred option, prohibiting cruising activity on all multi-lane roads at set times and on set days as stated in Point 7(e) above.

## SUMMARY OF SUBMISSIONS

### General

9. The public consultation period for these documents attracted 32 submissions from individuals and groups or organisations. Sixteen of these submissions supported the Bylaw but the remaining 16 submissions (50%) opposed it. Four late submissions were received and tabled at the Hearing with one supporting the Bylaw and three opposed.
10. The table below shows the themes under which the submissions' comments were analysed. Many submissions made comments on more than one theme.

Theme	Number of submissions	Percent of submissions
Supporting the use of bylaws to prohibit cruising	17	47%
Opposing the use of bylaws to prohibit cruising	19	53%
Supporting the Proposed Bylaw but would like to see specific roads listed (either in the Bylaw itself or on a register)	6	17%
Supporting the Proposed Bylaw but would like to see all days of the week	1	3%
Supporting the Proposed Bylaw but would like to see noise limits lowered and stereo noise included	2	6%
Concerns over the Proposed Bylaw due to enforcement issues, including the belief current legislation would address the issues	11	31%
Concerns over the Proposed Bylaw over displacement of the issue to other roads	4	11%
Opposing the Proposed Bylaw as concern over violation of Bill of Rights or personal freedom	6	17%
Opposing the Proposed Bylaw due to concerns of Council not focusing resourcing on alternatives including providing venues for car enthusiasts	5	14%

11. The Hearings Panel heard from three submitters:
  - Anthony Rohan (Club K)
  - Scott Lowan & Nadra Gosling (Legal Diesels Inc and Southern Car Culture)
  - Inspector Al Stewart (Canterbury Branch NZ Police)

#### **Submission from Club K**

12. The submission was on behalf of Club K, a car enthusiasts club that did make a submission on the national legislation when it was under review. Club K predominantly organises Sunday cruises for its members, and is distinct from the anti-social road users who cause the issues for residents and locals on Friday and Saturday nights. The main concern raised was that the noise levels produced by modified cars would not be addressed by the Bylaw and that banning certain roads would only serve to displace the issue. Additionally, other points raised were that some of this displacement would occur on NZTA roads which have a higher speed limit and that there could possibly be increased fatalities on these roads due to higher speeds of the anti-social road users forced onto these roads through the restrictions imposed by the Bylaw. Club K also stated concern that the Bylaw would not prohibit cars being driven in either direction on the prohibited roads and parking up, resulting in increased anti-social behaviour. The submission stated that Council needed to work with car enthusiasts to find common ground and offer positive solutions in order to create a change in culture.

#### **Hearing Panel Response**

13. The Hearing Panel expressed its thanks to Club K for the submission.

#### **Submissions from Legal Diesels Inc. and Southern Car Culture**

14. The main concerns from these submissions for Legal Diesels Inc. and Southern Car Culture (dedicated car enthusiasts) were about the definitions of the words “convoy”, “repeatedly”, what constitutes as excessive noise, how to deal with sound magnification in quiet areas such as Sumner, and how any future changes to the Bylaw will be publicly notified.
15. The submissions highlighted areas of concern to do with distinguishing the source of excessive noise in a group of cars, how Police discretion will be exercised, and what proof will be used to show convoys are occurring. There was an acknowledgement of the issues caused by anti-social road users (which were estimated to be about 5% of car enthusiasts from around 20 car clubs in Christchurch) and the embarrassment these have caused for genuine car enthusiasts, but suggested existing legislation could be used to target these extreme cases who cause the problems. It was highlighted there is a willingness to work with the Council to look at solutions, such as providing alternative venue options at Ruapuna and making it readily accessible to young car enthusiasts at the times they would like to use it. An opinion expressed by the submissions is the core issue has been about the ease in which young people can purchase powerful cars and make modifications to them.
16. The chair of Legal Diesels Inc. was heard in support of the Legal Diesel submission and reinforced the suggestions made to work with Council to investigate providing options for car enthusiasts to congregate safely in a controlled venue. Previous solutions (i.e. Ruapuna Speedway “burn out pad”) has not been used by anti-social road users or car enthusiasts due to a lack of ready access to the facilities.
17. Staff advised that the Police submission had recommended defining the words “convoy” and “repeatedly” and suggested definitions for the purposes of clarity in enforcement, and the Land Transport Act 1998 has set the noise levels for engines at 95 decibels. Clause 4(5) in the Bylaw states any resolution or amendments to resolutions made under clause 4(3), the Council will consult with the list of key stakeholders specified. Legal advice recommended the inclusion of explanatory notes to define the key terms identified in the submissions (“convoy”, “repeatedly”).

### Hearing Panel Decision

18. The Hearing Panel recognises the distinction between genuine car enthusiasts and anti-social road users, reiterating the purpose of the Bylaw is to address the issues caused by the latter. Councillor Bob Shearing is continuing open dialogue with Southern Car Culture in an upcoming meeting regarding alternative venues such as Ruapuna for the use of car enthusiasts. The Panel recommends including the definitions of the words “convoy” and “repeatedly” in an explanatory note under the definition of cruising in the Bylaw.

### Submission from Canterbury Branch New Zealand Police

19. The Road Policing Manager for the Canterbury District submitted the Police’s support of the Bylaw but stated they would like to see a register of roads to assist in enforcement. The Police included in their submission further clarification of the terminology and outlined proposed enforcement options the Police are considering should the Bylaw be adopted by Council. It was acknowledged there will be some trial and error in the implementation of the Bylaw with the technology and intensive resourcing needed, and at this stage it was undetermined exactly how the Police would be enforcing the Bylaw. The Road Policing Manager also acknowledged the concerns around Police discretion are legitimate but assured the Panel professional discretion is core to policing and there are defined boundaries in which Police officers will be using their discretion when it comes to this Bylaw. The flexibility of the Bylaw was identified as a positive factor that would enable the Council to add more streets on an as-needs basis in order to assist the Police to effectively manage any potential problems that may appear due to displacement. It was confirmed a potential issue is the loophole around drivers being able to switch when doing circuits, thereby enabling a vehicle to go down the same stretch of road in the same direction more than once in 60 minutes. As the Land Transport Act 1988 has defined cruising as an activity perpetrated by the driver and not the vehicle, there is no option for Police to exercise any powers over vehicles – enforcement would always apply against the driver. The Police have confirmed they would support a seven-day prohibition, but not a 24hour prohibition. The infringement fees have been set by Ministry of Transport and there can be no demerit points for infringements against the Bylaw.
20. The officer reported that having a register of roads instead of broad descriptions for the purpose of clarity would help with enforcement. Legal advice was to include the terminology definitions within the Bylaw.

### Hearing Panel Decision

21. The Hearing Panel agrees with the suggestions to include a register of roads and to define the terms “convoy” and “repeatedly” through an explanatory note. Additionally, the Panel notes that Police discretion is an integral part of policing work and accepts this will be used in enforcement for the cruising prohibitions.

### OTHER MATTERS

22. The Panel discussed at some length the matters raised through submissions and staff discussions, which included the following:
23. The inclusion of additional roads was specifically mentioned in submissions; namely, Manchester Street, Helmores Lane, Rossall Street and the one-lane section of Deans Avenue. Legal advice is to consult with the residents of these streets further to ensure best practice. The Panel proposes to determine the best process to include these streets within the Bylaw.
24. Discussion occurred on the possible legal challenges around violating the NZ Bill of Rights Act (NZBORA). Legal counsel advises the likelihood is the activity of cruising is not considered contrary to the NZBORA as it does not prohibit freedom of movement, but instead limits the types of movement at certain times on certain roads. Hence the proposed prohibitions on cruising are not unreasonable so do not contravene NZBORA. The Panel accepts legal advice that NZBORA has been considered as part of the s155 analysis.

25. The financial implications for signage for the streets were mentioned specifically within the Bylaw report presented to Council on 11 February 2010. For all multi-lane roads and Main Road in Sumner, there will be a need of approximately 1,000 signs to comply with the Traffic Control Devices Rule 2004 which will be an estimated cost to Council of \$340,000. The necessary resourcing for signage will be sourced from either reallocation of unspent capital funds in the 2009/10 year or through the finalisation of the 2010/11 Annual Plan. Officers advise they are requesting an exemption from Ministry of Transport and NZTA for the number of signs. The Panel recommends a letter be written to Central Government about the concerns over compliance with the Traffic Control Devices Rules on signage.
26. The merits of a city-wide ban to include all streets was mooted. Officers advised there would be significant financial implications for signs to be erected on every Council-controlled road within the city. Legal advice is the Council would not be operating within the spirit or intention of the law if adopting a city-wide ban but only enforcing on some streets with signage, and would not be complying with legal requirements if only putting signs on the streets entering or exiting the city. The Panel notes these matters are prohibitive and a city-wide ban is not recommended at this time.
27. The listing of streets within a register of roads and the ability to alter this register in future was raised. Police and staff support the proposed suggestion and legal counsel advises the register can be altered via resolution with consultation of key stakeholders listed in the Bylaw, but would not require a full Special Consultative Procedure. Officers advise that if in future cruising activity occurs on any NZTA-controlled roads, these may be delegated to Council by NZTA to allow cruising to be prohibited on these roads. The Panel proposes that a register of streets be referred to in the Bylaw and maintained by Council.
28. The Panel considered the move to apply the cruising prohibition to seven days a week. Legal counsel advises it is within the scope of the bylaw process that Council can make this change without further consultation as there was support from Police and in submissions. The Panel agrees that a seven day prohibition on cruising should apply and recommend it be included in the revised Bylaw.
29. The issues were raised about the national legislation requiring intensive signage and the high noise limits set at 95 decibels. The Panel notes that as Christchurch City Council will be the first to implement a cruising bylaw under the new legislation, there is a likelihood that a key action will be to report back to Central Government critical feedback on the issues around implementation under current legislation. The Panel proposes for the Council to write to the Minister of Transport about some of the concerns regarding the current national legislation.

#### **LEGAL CONSIDERATIONS**

30. The Special Consultative Procedure took place from 18 February and 29 March 2010. 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, Christchurch City Council Libraries and on the internet. Additionally, an information session for car enthusiasts was held. The submissions were considered by the Hearings Panel on 9 April 2010.
31. A bylaw hearing panel has no decision-making powers, but can make recommendations to the Council, in accordance with its delegations for that purpose, after considering written and oral submissions. The Council can then accept or reject those recommendations as it sees fit, bearing in mind that the Local Government Act 2002 requires views presented during consultation to be given "due consideration for decision-making".<sup>3</sup>
32. The Council, as the final decision-maker, must be in as good a position as the hearing panel in terms of being fully aware of the content of the written submissions, and from the report on the oral submissions. As the Special Consultation Procedure was used for this consultation, the

<sup>3</sup> 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".

Council cannot introduce anything new into the bylaw that has not arisen out of a submission made during consultation.

33. Section 157 of the Local Government Act 2002 requires that Council give public notice of the making of a bylaw as soon as practicable after the bylaw is made. It is recommended by the Panel that the Council resolve and the public notice indicate the Bylaw would come into effect on 1 July 2010, with subsequent notification to the Minister of Transport in accordance with s22AB of the LTA98.
34. 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 NZ Bill of Rights Act 1990, in accordance with section 155 of the Local Government Act 2002.

#### **HEARINGS PANEL RECOMMENDATIONS:**

It is recommended that the Council:

- (a) Adopt the Christchurch City Council Cruising Bylaw 2010, as amended and attached (Attachment 2).
- (b) Amend Clause 4 of the proposed bylaw to add a subclause providing for a register of roads to which the cruising prohibitions apply.
- (c) Add a definition of how the terms 'convoy' and 'repeatedly' will be interpreted by the NZ Police, as an explanatory note to the bylaw under the definition of cruising.
- (d) Amend Clause 4(5) to correct a drafting error.
- (e) Use the best process to add the following streets to the register of roads on which cruising is prohibited:
  - The single lane portion of Deans Avenue.
  - The parts of Manchester Street between Bealey and Moorhouse Aves.
  - Rossall Street.
  - Helmores Lane.
- (f) Resolve, under clause 4(2) of the Christchurch City Council Cruising Bylaw 2010 that the cruising prohibition apply 7 days a week between the hours of 10pm to 5am;
- (g) Resolve under clause 5 of the Christchurch City Council Cruising Bylaw 2010 that the period of time referred to in that clause will be 60 minutes.
- (h) Write to the Minister of Transport to:
  - (i) Register its concern that the application of the Land Transport Rule: Traffic Control Devices 2004 in relation to the Cruising Bylaw provisions of the Land Transport Act 1998 results in an unnecessary proliferation of signs and effectively removes the option of applying the bylaw to the whole of the City (should the Council determined a whole city prohibition is appropriate).
  - (ii) Reinforce its concerns that the application of signage regulations in the Land Transport Rule: Traffic Control Devices 2004 to bylaws in general made under the Land Transport Act 1998 creates an unnecessary proliferation of signs and place an unnecessary burden on Territorial Authorities.
  - (iii) Vigorously advocate for a reduction in the noise limits that apply to vehicles to 80 decibels.

- (i) Place a public notification of the bylaw becoming effective 1 July 2010.
- (j) Send a copy of the bylaw to the Minister of Transport within one week of the bylaw being made in accordance with s22AB(4) of LTA98.