

**38. TRAFFIC AND PARKING BYLAW AMENDMENT 2012**

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<b>Officer responsible:</b>	Unit Manager Transport & Greenspace
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**PURPOSE OF REPORT**

1. The purpose of this report is to recommend to the Council that it amend the Christchurch City Council Traffic and Parking Bylaw 2008.

**EXECUTIVE SUMMARY**

2. The Council's Traffic and Parking Bylaw 2008 came into force on 1 July 2008.
3. Clauses 12 and 13 are contained in Part 2 of the Bylaw which deals with traffic movement restrictions. Clause 12 deals with one way streets and clause 13 deals with roads or traffic lanes restricted to specific classes of vehicles (i.e. special vehicle lanes). The First Schedule of the Bylaw contains the actual list of one way streets in the City. The Second Schedule of the Bylaw then sets out the roads or traffic lanes that are restricted to specific types or classes of vehicles and the use of those roads or lanes.
4. Since the 2008 Bylaw came into force, if the Council has wished to make any amendments to the First and Second Schedules of the Bylaw, it has been necessary for the Council to undertake a special consultative procedure to make the changes. The bylaw was worded in this way because of the requirements of section 70 of the Transport Act 1962.
5. In May 2011 Parliament repealed the Transport Act 1962, and moved the bylaw-making powers in old section 70 into section 22AB of the Land Transport Act 1998.
6. Some changes were made to the wording of the bylaw-making provisions. The effect of these changes is that the Council no longer needs to specify the one way streets or special vehicle lanes in the Traffic and Parking Bylaw itself. Instead, the Bylaw may provide that the Council may leave these matters to be regulated by the Council by resolution as is permitted by section 22AB(3) of the Land Transport Act 1998 and authorised by section 13 of the Bylaws Act 1910.
7. Recently, staff have identified that some amendments need to be made to the Second Schedule of the Traffic and Parking Bylaw 2008. Rather than undertake a special consultative procedure to amend the Second Schedule, staff propose that it would be appropriate to amend the Bylaw itself and take advantage of the new bylaw-making provisions.
8. A draft Christchurch City Council Traffic and Parking Amendment Bylaw 2012 is attached (**Attachment 1**).
9. Once the Bylaw amendment has been completed, the Council will be in a position to resolve the changes to the special vehicle lanes that have been identified.

**FINANCIAL IMPLICATIONS**

10. The cost of public notices and other publicity for a special consultative procedure is estimated to be in the order of \$5,000. The costs of the publicity and general communication related to the proposed amendment to the 2008 Bylaw will be funded through existing Transport and Greenspace Operational budgets.

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

11. As above.

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LEGAL CONSIDERATIONS

12. As noted above, under section 22AB(1) of the Land Transport Act 1998, the Council as a road controlling authority may make any bylaw that it thinks fit for one or more of the following purposes:
  - "(p) providing that, subject to the erection of the prescribed signs, vehicles on roads must travel in one specified direction only:*
  - ...*
  - (r) prescribing, subject to the marking of lanes on the roadway, that on any road any traffic lane may be used or any turning movement may be made only by buses, taxis, cycle or vehicles of other specified classes or vehicles carrying specified classes of loads or no fewer than a specified number of occupants:".*
13. Section 22AB(3) provides that a bylaw made under subsection (1) may leave any matter or thing to be regulated, controlled, or prohibited by the road controlling authority by resolution generally, for any specified classes of case, or in a particular case. Section 13 of the Bylaws Act 1910 also contains a similar provision. However, the Council must be careful to ensure that any discretion left to the Council is not so great that it might be considered unreasonable (which could make the bylaw, or part of it, invalid).
14. Section 22AB(4) provides that a copy of every bylaw made under this section by a road controlling authority must, within one week after being made, be sent by the road controlling authority to the Minister, who may at any time disallow the bylaw or any part of the bylaw under section 22AC.
15. Section 22AD states that a road controlling authority that is a local authority may not make a bylaw under section 22AB unless it has used the special consultative procedures set out in section 83 of the Local Government Act 2002. Section 22AE sets out the requirements for publication of the bylaw once it has been made.
16. While the Land Transport Act 1998 requires the Council to use the special consultative procedure to make the bylaw, the Land Transport Act is silent as to whether the requirements of sections 86 and 155 of the Local Government Act 2002 apply. Section 86 sets out how the special consultative procedure is to be used when making a bylaw under the Local Government Act. Section 155 requires local authorities to determine that any proposed Bylaw:
  - (a) is the most appropriate way of addressing the perceived problems:
  - (b) is in an appropriate form:
  - (c) is not inconsistent with the New Zealand Bill of Rights Act 1990 ("NZBORA").
17. Because it is not clear whether sections 86 and 155 apply, the advice of the Legal Services Unit is to comply with the requirements of these provisions.
18. In addition to the statutory requirements, the law generally requires that any bylaw must be *intra vires* (in other words within the statutory powers that authorise the bylaw), certain, not repugnant to the general laws of New Zealand, and reasonable. There is a considerable body of case law on what constitutes reasonableness in the bylaw context. The Courts have noted that in ascertaining the reasonableness or unreasonableness of a bylaw, they will look to the surrounding facts, including the nature and condition of the locality in which it is to take effect, the problem it seeks to solve or proposes to remedy and whether public or private rights are unnecessarily or unjustly invaded.

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

19. Yes.

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20. The section 155 analysis is as follows:

**(a) *What is the perceived problem?***

The perceived problem is the time and expense incurred by the Council in carrying out a special consultative procedure every time the Council wishes to amend the current First and Second Schedules of the Bylaw. For example, if the Council wishes to add a new bus or cycle lane it can take anywhere from six weeks to three months to complete the consultation process just to add the new lane to the Bylaw. In terms of financial implications for the Council, a small amendment of this nature could cost in excess of \$30,000.

Since the 2008 Bylaw came into force, the Council has undertaken 11 Bylaw amendments to change the First and Second Schedules.

**(b) *Is amending the Traffic and Parking Bylaw the most appropriate way of addressing the problem?***

It is considered that there are three reasonably practicable options for addressing this problem. Option 1 is amending clauses 12 and 13 of the Bylaw to allow the Council to specify by way of resolution the one way streets and special vehicle lanes and the like that apply in the City. Option 1 involves removing the First and Second Schedules of the Bylaw.

Option 2 is keeping the status quo (and therefore requiring the Council to carry out a bylaw amendment every time the Council wishes to change the First and Second Schedules).

Option 3 is undertaking a more limited amendment so that only clause 13 is amended and the Second Schedule removed. This means that the Council would still need to amend the Bylaw if it wished to add, remove or alter a one way street. However, the process with respect to special vehicle lanes and the like would be simplified.

It is considered that Option 1 is the most appropriate way of addressing the perceived problem. It will allow the Council to specify one way streets and special vehicle lanes, and the like, by way of resolution. It will reduce the costs for the Council and also speed up the process. The resolutions will be recorded in a register which will be accessible on the Council's website and also be available from the Council's Services Centres. These registers will operate in the same fashion as the register relating to the prohibited times on roads clause 15 of the Traffic and Parking Bylaw 2008.

If the Council wishes to make a resolution under clause 12 or 13, the Council will still need to comply with the decision-making provisions of Part 6 of the Local Government Act 2002. For example, under section 78, giving consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter.

**(c) *Is the proposed bylaw drafted in the most appropriate form?***

It is considered that the proposed bylaw is drafted in the most appropriate form. New clause 12 provides that the Council may by resolution specify any road or part of a road where vehicles may travel in one specified direction only. New clause 13 provides that the Council may by resolution specify any road or part of a road where a traffic lane may be used only by buses, taxis, cycles or vehicles of other specified classes; or vehicles carrying specified classes of loads or no fewer than a specified number of occupants. A similar provision is also made in clause 13 in relation to restricted turning movements.

There is also a revocation and savings provision which revokes the First and Second Schedules but carries over the content of those Schedules as if they were resolutions of the Council.

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**(d) Are there any New Zealand Bill of Rights Act 1990 implications?**

The only provision of the NZBORA which has a bearing on the proposed amendment to the Bylaw is section 18, which provides that everyone lawfully in New Zealand has the right to freedom of movement. New clauses 12 and 13 will be a limitation on this right. However, according to section 5 of the NZBORA, the rights and freedoms contained in the Bill of Rights may be subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. It is considered that given section 22AB of the Land Transport Act 1998 specifically authorises bylaws of this kind, the limits in clauses 12 and 13 on freedom of movement are reasonable and can be demonstrably justified in a free and democratic society.

Therefore, the proposed bylaw is not considered to be inconsistent with the NZBORA.

**(e) Conclusion**

That clauses 12 and 13 of the Traffic and Parking Bylaw 2008 should be amended, and the First and Second Schedules of that Bylaw should be revoked.

21. In terms of the other general requirements that apply to bylaws, the proposed bylaw is considered to be:
- (a) intra vires (in other words within the statutory powers that authorise the bylaw). It is authorised by section 22AB; and
  - (b) certain (in that it is clear what a person's obligations are with respect to one way streets and special vehicle lanes and the like); and
  - (c) not repugnant to the general laws of New Zealand; and
  - (d) reasonable. It is acknowledged that both clauses will grant the Council a discretion to determine by resolution special vehicle lanes and one way streets and the like. However, these discretions are not considered to be so great as to be unreasonable. To a large extent they are operational matters and as the Council has done with other operational matters in the Traffic and Parking Bylaw, these have been left to the Council to determine by resolution at a later stage when appropriate. The Council will still need to comply with the decision-making requirements of the Local Government Act 2002 in resolving matters under these clauses.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

22. Aligns with the Streets and Transport activities by contributing to the Council's Community Outcomes – Safety and Community.

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

23. As above.

**ALIGNMENT WITH STRATEGIES**

24. Aligns with Council strategies including the Cycling Strategy, Greater Christchurch Travel Demand Management Strategy (GCTDMS), Healthy Environment Strategies – Sustainability, and the Road Safety Strategy.

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

25. As above.

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CONSULTATION FULFILMENT

26. If the Council decides to seek an amendment to the Traffic and Parking Bylaw 2008, a Special Consultative Procedure needs to be undertaken in accordance with section 22AD of the Land Transport Act 1998 and section 83 of the Local Government Act 2002.
27. In undertaking a special consultative procedure the Council must prepare a Statement of Proposal. In accordance with section 86 of the Local Government Act 2002, the Statement of Proposal must include:
  - (a) as the case may be:
    - (i) a draft of the bylaw as proposed to be made or amended; or
    - (ii) a statement that the bylaw is to be revoked; and
  - (b) the reasons for the proposal; and
  - (c) a report on any relevant determinations by the local authority under section 155.
28. The Statement of Proposal must also include a Summary of Information. A Statement of Proposal (**Attachment 2**) and Summary of Information (**Attachment 3**) are attached.
29. The Council must give public notice of the proposal. Any member of the public can make a submission on the proposal and will have the opportunity to be heard before a Council Hearings Panel. The submission period must be at least one month. It is noted that a Consultation Leader from the Council will also contact various stakeholders as a matter of course, giving them notice of the upcoming consultation.

STAFF RECOMMENDATION

It is recommended that the Council, in relation to the proposed Christchurch City Council Traffic and Parking Amendment Bylaw 2012, resolves as follows:

- (a) That the proposed Christchurch City Council Traffic and Parking Amendment Bylaw 2012 meets the requirements of section 155 of the Local Government Act 2002, in that:
  - (i) the Council determines an amendment bylaw is the most appropriate way of addressing the perceived problem; and
  - (ii) the Council determines the proposed amendment bylaw is the most appropriate form of bylaw; and
  - (iii) the Council determines the proposed amendment bylaw gives rise to some implications under the New Zealand Bill of Rights Act 1990 but that the proposed amendment bylaw is not inconsistent with that Act:
- (b) That it commence the special consultative procedure in order to adopt the Christchurch City Council Traffic and Parking Amendment Bylaw 2012:
- (c) That the Statement of Proposal (**Attachment 2**) (which includes the proposed Bylaw) and Summary of Information (**Attachment 3**) be adopted for consultation:
- (d) That public notice of the consultation be given in *The Press* and *Christchurch Star* newspapers and on the Council's website at the start of the consultation period, and that public notice of the proposal be given in community newspapers distributed in the Christchurch district area, as close as possible to the start of the consultation period:
- (e) That the consultation documents be made available for public inspection at Council Service Centres, Council Libraries and on the Council's website during the consultation period:

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- (f) That the consultation period be between 12 January 2011 and 16 February 2012 and that a information session be held at 5.00pm on the 8 February 2012 at the Civic Offices, 53 Hereford Street:
- (g) That a hearings panel be appointed to hear submissions during 5 and 7 March 2012, deliberate on those submissions and to report back to the Council on the final form of the Bylaw on 24 May 2012.

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BACKGROUND (THE ISSUES)

30. The Council's Traffic and Parking Bylaw 2008 came into force on 1 July 2008.
31. Clauses 12 and 13 are contained in Part 2 of the Bylaw which deals with traffic movement restrictions.
32. Clause 12(1) of the Bylaw currently provides that *"every person in a vehicle on a road described in the First Schedule of this Bylaw shall travel only in the direction specified for that road."* The First Schedule of the Bylaw then sets out the one way streets in the City.
33. Clause 13(1) of the Bylaw provides that *"no person in charge of a vehicle may use a road or lane described in the Second Schedule of this Bylaw unless,-*
  - (a) *the vehicle is of the class specified to use that road or lane (for example, a bus, taxi or cycle); and*
  - (b) *any turning movements comply with the provisions of that Schedule."*
34. The Second Schedule of the Bylaw then sets out the roads or traffic lanes that are restricted to specific types or classes of vehicles and the use of those roads or lanes. The Second Schedule also provides that the exact location of any road or traffic lane restricted to specific classes of vehicles, for example, special vehicle lanes, will be marked and signed as prescribed by the Land Transport Rule: Traffic Control Devices 2004 (or any other applicable legislation) and, where they are not prescribed, will be decided by traffic engineering staff applying best practice guidelines. It also states that the hours of operation of any traffic lane restricted to specific classes of vehicles will be determined by Council by resolution as required from time to time, in accordance with the decision-making requirements in the Local Government Act 2002.
35. Since the 2008 Bylaw came into force, if the Council has wished to make any amendments to the First and Second Schedules of the Bylaw it has been necessary for the Council to undertake a special consultative procedure to make the changes. This is because the Schedules are part of the Bylaw and the only way in which a Bylaw may be amended is by using the special consultative procedure.<sup>1</sup> The Traffic and Parking Bylaw 2008 was made under the authority of a number of acts including section 70 of the Transport Act 1962. Section 70 contained various bylaw-making powers and some of these powers required various matters to be specified in the bylaw itself.
36. In May 2011 Parliament passed the Land Transport (Road Safety and Other Matters) Bill which made substantial amendments to the Land Transport Act 1998. The Bill repealed the remaining provisions of the Transport Act 1962 and inserted a wider range of bylaw making powers in section 22AB of the Land Transport Act 1998. However, while it included some new bylaw-making powers, the Bill retained some of the old wording from section 70 of the Transport Act 1962.
37. Before the Bill was passed, the Council made a submission on the Land Transport (Road Safety and Other Matters) Bill during the Select Committee process. This submission asked the Select Committee to consider the wording of the bylaw making provisions and make some small adjustments to some of the provisions so that certain matters did not need to be specified in the Bylaw itself. The submission stated that:

*"3.12 With respect to the bylaw-making powers that are proposed to be transferred from section 72 of the Transport Act 1962, the Council notes that some of the peculiarities of the wording of these provisions has been maintained. The Council submits that the wording of these provisions could be improved. On a number of occasions the wording of each provision effectively overrides the ability of the Council to leave matters to be determined by resolution at a later date. In other words, the wording overrides section 22AB(3). Examples are as follows:*

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<sup>1</sup> Minor amendments may be made by resolution in limited circumstances under section 156(2) of the Local Government Act 2002.

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- *The power in paragraph (c) to prohibit or restrict absolutely or conditionally any specified class of traffic on any road or roads specified in the bylaw. The Council queries why the roads need to be specified in the bylaw itself. The Council submits that the provision should simply refer to any specified road or roads.*
  - *The power in paragraph (p) to require that one way roads must be designated in a bylaw. While it is appropriate to provide for one way roads in a bylaw, the power to designate specific roads should be a matter which is able to be determined by Council resolution if a Council so determines.*
  - *The power in paragraph (r) to prescribe subject to the marking of lanes on the roadway, that on any road any traffic lane specified in the bylaw may be used or any turning movement may be made only by buses, taxis, cycles or vehicles of other specified classes or vehicles carrying specified classes of loads or no fewer than a specified number of occupants. This provision effectively requires that special vehicle lanes must be specified in the bylaw itself."*
38. The Select Committee took the Council's comments on board and the bylaw-making powers in section 22AB(1) such as paragraphs (p) and (q) were amended to read as follows:
- "(p) *providing that, subject to the erection of the prescribed signs, vehicles on roads must travel in 1 specified direction only:*
- ..."
- (r) *prescribing, subject to the marking of lanes on the roadway, that on any road any traffic lane may be used or any turning movement may be made only by buses, taxis, cycles or vehicles of other specified classes or vehicles carrying specified classes of loads or no fewer than a specified number of occupants:".*
39. The effect of this change is that the Council no longer needs to specify the one way streets or special vehicle lanes in the Traffic and Parking Bylaw itself. Instead, the Bylaw may provide that the Council may leave these matters to be regulated by the Council by resolution as is permitted by section 22AB(3) of the Land Transport Act 1998 and authorised by section 13 of the Bylaws Act 1910.
40. Since the amendments to the Land Transport Act 1998 came into force, staff have identified that some amendments need to be made to the Second Schedule of the Traffic and Parking Bylaw 2008. Rather than undertake a special consultative procedure to amend the Second Schedule, staff propose that it would be appropriate to amend the Bylaw itself and take advantage of the new bylaw-making provisions. This means that clauses 12 and 13 of the Bylaw can be reworded so that:
- (a) Clause 12 provides that the Council may by resolution specify any road or part of a road where vehicles must travel in one specified direction only; and
  - (b) Clause 13 provides that the Council may by resolution specify any road or part of a road where a traffic lane may be used only by –
    - buses, taxis, cycles or vehicles of other specified classes; or
    - vehicles carrying specified classes of loads or no fewer than a specified number of occupants.
    - A similar provision is made in clause 13 in relation to restricted turning movements.
  - (c) The First and Second Schedules will be revoked.
41. A draft Christchurch City Council Traffic and Parking Amendment Bylaw 2012 is attached (**Attachment 1**).
42. Once the Bylaw amendment has been completed, the Council will be in a position to resolve the changes that have recently been identified.



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THE OBJECTIVES

43. The purpose of the proposed Amendment to the Council's Traffic and Parking Bylaw 2008 is to make it easier and more cost efficient for the Council to prescribe, by resolution, one way streets, special vehicle lanes and the like.

THE OPTIONS

44. There are three options. These are

**Option 1:** amending clauses 12 and 13 of the Bylaw to allow the Council to specify by way of resolution the one way streets and special vehicle lanes and the like that apply in the City. Option 1 involves removing the First and Second Schedules of the Bylaw.

**Option 2:** keeping the status quo (and therefore carry out a bylaw amendment every time the Council wishes to change the Schedules).

**Option 3:** undertaking a more limited amendment so that only clause 13 is amended and the Second Schedule removed. This means that the Council would still need to amend the Bylaw if it wished to add, remove or alter a one way street. However, the process with respect to special vehicle lanes and the like would be simplified.

THE PREFERRED OPTION

45. It is considered that Option 1 is the most appropriate option. It will allow the Council to specify one way streets and special vehicle lanes by way of resolution. The resolutions will be recorded in a register which will be accessible on the Council's website and also be available from the Council's Services Centres. These registers will operate in the same fashion as the register relating to prohibited times on roads clause 15 of the Traffic and Parking Bylaw 2008.
46. As previously noted, if the Council wishes to make a resolution under clause 12 or 13, the Council will still need to comply with the decision-making provisions of Part 6 of the Local Government Act 2002. For example, under section 78, giving consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter.
47. Option 2 is the least preferred because of the time it takes to effect changes to the Bylaw and the costs involved in undertaking a special consultative procedure each time the Council wishes to amend the current Bylaw. Option 3 is not the preferred option because it would still require the Council to undertake a special consultative procedure each time the Council wants to make a new one way street or make amendments to the current one way street system.