

STATEMENT OF PROPOSAL TO MAKE THE HUTT CITY COUNCIL BYLAW 2017 TRAFFIC

AND REVOKE THE HUTT CITY COUNCIL
BYLAW 2007 TRAFFIC

AUGUST 2017

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1. INTRODUCTION

Hutt City Council has reviewed and as a consequence proposes to revoke the existing Hutt City Council Traffic Bylaw 2007 (“the 2007 Bylaw”) and replace it with a new bylaw relating to traffic (“the proposed Bylaw”). This Statement of Proposal pertains to the review of the 2007 bylaw and the proposed new Traffic Bylaw.

The 2007 Bylaw was made under the Local Government Act 1974 and Transport Act 1962. Since then, the Local Government Act 2002 (“LGA”) has come into force. Under the LGA, the Council is required to review its 2007 Bylaw before July 2017. If that review is not completed within two years of that date the Bylaw will lapse in July 2019.

This paper sets out the statutory framework for the review of the 2007 Bylaw, identifies the perceived problems that the proposed Bylaw needs to address, and discusses whether the proposed Bylaw is the most appropriate way to address the perceived problems. This statement then sets out the reasons why the Council considers the proposed Bylaw to be the most appropriate form of Bylaw. The implications of the proposed Bylaw under the New Zealand Bill of Rights Act 1990 are discussed. Finally, an explanation of the proposed content of, and rationale for, each provision of the proposed Bylaw is given.

This Statement of Proposal has been prepared in accordance with section 83 of the LGA.

2. REVIEW OF THE 2007 BYLAW

2.1 STATUTORY FRAMEWORK FOR THE REVIEW

Council is required to review its 2007 Bylaw relating to traffic before 3 July 2017 under section 159 of the LGA. Under sections 159 and 155, the review of a bylaw must take the form of reconsideration of the matters that the Council is normally required to consider before making a bylaw.

Section 155 requires the Council to determine whether the proposed Bylaw is the most appropriate way of addressing the perceived problem. If so, the Council must determine whether the proposed Bylaw is the most appropriate form of bylaw, and whether the proposed Bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (“Bill of Rights”). No bylaw can be inconsistent with the Bill of Rights.

In reviewing a bylaw, the Council must use the special consultative procedure set out in section 83 of the LGA (as required by section 156).

The 2007 Bylaw can be viewed by visiting the Council’s website: www.huttcity.govt.nz

2.2 BYLAW-MAKING POWERS

Council has the power to make bylaws for its district (under section 145 of the LGA) for the purposes of:

- a. protecting the public from nuisance;
- b. protecting, promoting, and maintaining public health and safety;
- c. minimising the potential for offensive behaviour in public places.

A bylaw about traffic is consistent with all of the purposes for which the Council can make bylaws under section 145.

There are bylaw-making powers under other legislation that are relevant to traffic. The Council is empowered to make bylaws about the use of roads under section 72 of the Transport Act 1962. These powers include the power to prohibit or restrict the stopping, standing, or parking of vehicles on any road (section 72(1)(k)).

2.3 THE PERCEIVED PROBLEM

Some activities related to parking and traffic create problems on Hutt City roads that are required to be addressed by the Council. These activities may cause:

- an unreasonable obstruction to other road users. Hutt City faces increasing demand for parking spaces and use of the overall road network, as well as increasing congestion due to growth in the volume of traffic. Examples of activities that can cause problems include parking in a parking space in a busy area all day, or leaving a large container on a road for a long period of time;
- a danger to other people in the area, including pedestrians and other road users. Examples include skateboarding at high speed, or displaying vehicles for sale on a busy road; or
- damage to property or to the environment, such as parking on a cultivated berm.

There have also been a number of changes to parking technology since the 2007 Bylaw was made. In particular, these changes have meant that there are now a variety of methods by which people can pay for the use of parking spaces. The Council intends to make use of new parking technology to make it easier for people to comply with parking restrictions, but requires a bylaw that allows for different types of technology to be used.

Since 1997, there have also been significant changes to traffic legislation. The Land Transport Act 1998 has come into force, along with its associated Rules, including the Land Transport (Road User) Rule 2004 and the Land Transport Rule (Traffic Control Devices) 2004. The 2007 Bylaw requires updating to make it consistent with the new legislative framework.

2.4 MOST APPROPRIATE WAY TO ADDRESS PERCEIVED PROBLEM

Consideration has been given to a range of options for addressing the problems identified above.

Non-regulatory options

The Council has considered non-regulatory options for addressing the perceived problems. However, the Council does not consider that non-regulatory measures will be sufficient to address problems related to parking and traffic. The fundamental difficulty with any voluntary compliance regime in this area is that individuals do not have an adequate incentive to comply. The Council therefore requires bylaws so that it is able to enforce restrictions on parking and traffic for the benefit of all road users.

The Council uses educative programmes to advise people of major changes to parking or traffic rules. However, these measures alone are not sufficient to address the problems.

The Council considers it is necessary to have a Traffic Bylaw in place to ensure there is compliance with its traffic policies and practices, which have an important effect on the general public, property, and the environment.

Regulatory options

Some of the provisions of the 2007 Bylaw address matters that are either already covered by, or are related to matters covered by, existing legislation.

A number of the provisions in the 2007 Bylaw have some crossover with provisions in the Land Transport (Road User) Rule 2004 and the Land Transport Rule: Traffic Control Devices 2004. However, as these Rules do not address all of the perceived problems, the Council considers that it is appropriate to continue to have a Traffic Bylaw in order to address the perceived problems. Some amendments have been proposed to refine the scope of the Bylaw in light of the Rules to ensure there is no unnecessary overlap.

Community outcomes

Hutt City Council has a commitment to achieving city-wide outcomes identified by the community. Community Outcomes are set out on page 7 of the Hutt City Council's *Long Term Plan 2015 – 2025*. The Roading and Footpaths activity contributes to our community outcomes of a safe community and an accessible and connected city.

These outcomes relate to the matters covered by the Traffic Bylaw because the regulation of parking in central city and city fringe areas may encourage the use of public transport. In addition, ensuring that Hutt City is a safe place to use any mode of transport and is not overly congested helps to make Hutt City interesting and attractive.

In order to achieve these goals, the Council considers it necessary to have in place measures to regulate behaviour or activities that raise concerns about safety or property damage, or cause nuisance, on roads. The proposed Bylaw is consistent with the outcomes in the Council long-term plan.

Summary

Although other regulatory and non-regulatory measures may assist in managing the perceived problems, the Council does not consider that these other measures are sufficient to address the perceived problems.

The Council considers that the proposed Bylaw is the most appropriate way to address the perceived problems. The Council also considers that the proposed bylaw will contribute to achieving the community outcomes identified in the Council's *Long Term Council Community Plan 2006-2016*.

2.5 MOST APPROPRIATE FORM OF BYLAW

The proposed Bylaw addresses the perceived problems by allowing the Council to regulate the use of parking spaces on Hutt City roads, and prohibiting or regulating certain activities on roads where they cause nuisance or hazards to the safety of pedestrians and road users. The proposed Bylaw is flexible and allows changing circumstances to be recognised.

The proposed Bylaw clearly states the Council's position by stating whether or not an activity is permitted, and which activities constitute a breach of the bylaws. The Bylaw sets out what action

needs to be taken to comply with it, for example, whether a permit from the Council is required for the activity.

The proposed Bylaw reflects a number of the Council's existing policies and practices, and also reflects community goals that have been identified by the Council.

The proposed Bylaw is consistent with the style when compared with other parts of the Hutt City Council Bylaws.

The proposed Bylaw is therefore the most appropriate form of bylaw. It clearly states the Council's position on each issue, how the Bylaw can be complied with, reflects the Council's existing policies and practices, and addresses the perceived problem.

2.6 IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990 ("BILL OF RIGHTS")

As mentioned, Council is required to determine whether a bylaw relating to traffic gives rise to implications under the Bill of Rights (section 155 of the LGA). Two of the provisions have the potential to conflict with some of the rights and freedoms contained in the Bill of Rights. These are:

- proposed clause 12 – Skateboards; and
- proposed clause 11 – Displaying vehicles for sale on road.

Skateboards

The proposed clause 15, on skateboarding (and other similar activities) provides that the Council can specify an area as a skating ban area, either generally or on specific times and days.

The proposed clause contains a general prohibition on skateboarding in a public place in a manner that is dangerous or creates a nuisance for traffic or pedestrians. Skateboarding is also prohibited by the proposed clause on a road or public place during the night, or in a skating ban area.

There is a general exemption for skateboarding in facilities that are provided by the Council for those purposes. There is also a requirement for a person who is holding a competition or gathering that involves skateboarding to seek written permission from the Council before doing so, and comply with any conditions imposed by the Council on its written permission (which allows the Council to make sure any potential safety issues with the event are addressed).

This clause has the potential to infringe on the right to freedom of peaceful assembly (in section 16 of the Bill of Rights) and the right to freedom of association (section 17 of the Bill of Rights). However, the Council considers that the proposed clause is not inconsistent with the Bill of Rights.

Although the Bylaw makes some imposition on individual's rights, there are good reasons to justify the Bylaw. Skateboarding, and other similar activities, can cause both a nuisance and a safety hazard to pedestrians and road users.

In addition, there are important limitations in the Bylaw on the Council's ability to impose skateboarding bans. The proposed clause ensures that skateboarding bans will only be imposed in areas where the Council has evidence that there have been problems caused by skateboarding that justify a ban.

The proposed clause also ensures that a ban does not impose on individual's rights more than it should, by the inclusion of the possibility of having the skateboarding ban only at certain times and certain days.

Individuals rights are further protected by the requirement on Council to take certain factors into account in deciding whether to make an area a skateboarding ban area, as discussed above. Finally, although the proposed clause prohibits skateboarding on a road or public place during the night, or in any skateboarding ban area, the proposed clause does not prohibit skateboarding altogether. Skateboarding is only generally prohibited when it is dangerous or creates a nuisance for traffic or pedestrians.

The Council's view is that in accordance with section 5 of the Bill of Rights, proposed clause 11 represents a reasonable limit on the rights to freedom of peaceful assembly and of association that can be demonstrably justified in a free and democratic society.

Displaying vehicles for sale on roads

The proposed clause 14, which relates to the display of vehicles for sale on roads, also has the potential to infringe on the same rights as identified above for skateboarding.

The proposed clause 14 provides that no person may stop, stand, or park a vehicle on a road for the purpose of displaying the vehicle for sale on the basis that it is reasonable to allow residents to advertise their vehicles for sale provided they are being used for day to day travel. This allows individuals to continue in the time-honoured tradition of advertising and selling their own car and at the same time prevents car dealers (either registered or unregistered) from using public roads to advertise and sell their vehicles.

It is Council's view that the proposed clause 11 also represents a reasonable limitation on the rights contained in the Bill of Rights.

Summary

No provision of the proposed Bylaw is therefore inconsistent with the Bill of Rights.

3. THE PROPOSED BYLAW

3.1 ADDITIONS, MODIFICATIONS AND DELETIONS MADE IN RESPECT OF THE 2007 BYLAW

In reviewing the best way to address the perceived problems in drafting the proposed Bylaw, the Council began from first principles. Many of the provisions from the previous Bylaw have been retained but where there are proposed changes this has been displayed as tracked changes in the proposed bylaw attached.

Other parts of the proposed Bylaw are new, such as the provisions relating to coupon parking. These new provisions were considered necessary to address the perceived problems. These provisions are specifically identified in section 3.2 below.

3.2 EXPLANATION OF THE PROPOSED BYLAW CONTENT

This section gives an overview of the rationale for, and the content of, the proposed Bylaw.

Proposed clause 1 – Interpretation

This clause is proposed so that the meaning of terms used in the bylaw is clear. It also avoids any potential confusion about the meaning of terms that are also used in the Land Transport rules.

One of the key definitions is the definition of “metered parking area”. This definition is intended to allow the Council to specify or allow payment for parking by a variety of methods, so that the bylaw will remain relevant as parking technology changes.

Proposed clause 2 – General

This clause is proposed to outline the matters Council can address using the provisions outlined in the proposed bylaw.

Proposed clause 3 – Time restricted parking

This clause is proposed to enable Council to create time restricted parking which may also be subject to conditions imposed by Council.

Proposed clause 4 – Coupon or metered parking areas

This clause is proposed to allow the Council to specify certain areas as coupon parking areas or metered parking areas, as well as the days and times for which fees apply to the areas, and the length of time for which a vehicle can be parked in the area without paying any fee (if any).

A safeguard has been included in the form of a requirement that appropriate road markings and signs must be in place in the areas before the parking restrictions can come into effect. The Council is obliged to put up appropriate signs and road markings by the Land Transport Rule: Traffic Control Devices 2004.

Proposed clause 5 – Residents’ parking

The Council considers that it is appropriate to continue to allow for a residents' parking scheme in the bylaw, which may be invoked by a decision of the Council. This provision of the Bylaw is designed to address the increasing problem that residents in some areas have in finding a parking space near their place of residence. This is especially important for residents who have no off-street parking.

The Bylaw allows residents to apply to the Council for a resident's parking permit, which allows the person to park in a resident's parking area near their place of residence. Only residents that meet the requirements of the bylaw will be able to park in residents' parking areas. The Council may impose conditions on permits as it considers appropriate.

Proposed clause 6 – Reserved parking and no stopping areas

This clause is proposed to ensure that a person can only park in reserved parking and no stopping areas if he or she validly displays a parking permit issued by the Council. It is also designed to allow Council enforcement staff to easily identify whether somebody is parking in accordance with the Bylaw, by requiring that permits be displayed prominently.

Proposed clause 7 – Time restricted parking

This clause is proposed to make it clear that no one can use a vehicle in a manner that is contrary to any Council time restricted parking prohibition, limitation or restriction.

Proposed clause 8 – Restriction on parking in coupon parking areas

This clause is proposed to complement the Council's power in clause 4 to specify metered parking areas, by providing that a person who parks a vehicle in a metered parking area can only do so if they validly display a parking coupon or a coupon exemption permit. This clause also outlines the conditions associated with the proper use of a parking coupon or a coupon exemption permit.

Proposed clause 9 – Restrictions on parking in metered parking areas

This clause is proposed to complement the Council's power under clause 4 to specify that no one can use a metered parking space on the days and during the times established by the Council without paying the prescribed fee.

Proposed clause 10 – Restrictions on parking in resident's parking areas

This clause is proposed to complement the Council's power under clause 5 to specify that no one can park in a residents parking space unless they have a residents' parking permit.

Proposed clause 11 – Restrictions on parking in parking spaces

This clause is proposed to impose certain general restrictions on parking in parking areas, such as the requirement to occupy only one parking space at a time, and not to park in a parking space that is already occupied by another vehicle.

These restrictions will avoid any nuisance and potential health and safety hazards associated with inconsiderate parking, and make it easier for others to use surrounding parking spaces. This provision also clarifies the situations in which it is appropriate not to comply with these restrictions, for example, when the vehicles are both motorcycles, they may both occupy the same parking space.

Proposed clause 12 – Parking on the grass

The proposed clause 12 deals with the damage done to grass by parking, and addresses the traffic and pedestrian safety hazard that can arise when cars are parked on the side of the road. Safety hazards can arise because of the obstruction to viewing traffic on the road. Hazards can also arise when people have to walk around parked vehicles and potentially step onto roads to get around vehicles parked on the curb. Having cars parked on the areas next to road also causes problems with access by Council staff or contractors who need to do maintenance work in those areas.

The issues with safety, damage and access are such that the Council has considered not allowing parking on the grass at all. However, the Council decided this would be too expansive and the clause therefore only prohibits parking on the grass if there is likely to be damage.

The Council acknowledges that in some cases, car drivers have no option but to park on the area next to a road, for example, when their places of residence have no off-street parking. In those situations, the bylaw allows drivers to safely park on the curb. Drivers will still have to comply with the general requirement to park with due consideration for other road users, and any other applicable requirements, as outlined in the Land Transport (Road User) Rule 2004.

Proposed clause 13 – Parking immobilised or unlicensed vehicles

Proposed clause 13.1 of the proposed bylaw provides that no person can stop, stand, or park a vehicle on a road for 7 or more days that cannot be driven away safely.

Proposed clause 13.2 empowers Council to seize and impound any vehicle in breach of clause 13.1. This covers situations where vehicles are simply left on the side of the road indefinitely. People will still be allowed to leave such a vehicle on the road for less than seven days.

Proposed clause 14 – Displaying vehicles for sale on road

Proposed clause 14 is proposed to deal with any safety hazard caused by more than one person stopping, standing, or parking vehicles on roads for the purposes of displaying the vehicles for sale. Refer also to section 2.6 above.

Proposed clause 15 – Skateboards

As discussed in section 2.6 above, this clause is proposed to deal with the danger and nuisance to traffic and pedestrians caused by skateboarders.

Proposed clause 16 – Placing containers on roads

Proposed clause 16 gives the Council enforcement powers in respect of the Council's policy, *Skip/Container Bins on Road Reserve (including Grass Berms)*. The problem that the bylaw is intended to address is the hazard created by having large containers on roads, which may inconvenience traffic and pedestrians and obstruct the view of the road.

Clause 16 provides that containers that are of, or over, certain dimensions specified in the Bylaw cannot be placed on roads without the prior written permission of the Council. Any containers which are smaller than that can be placed on roads subject to certain restrictions set out in clause 16.3. For example, one of the requirements is that the name of, and a 24-hour contact telephone number for, the owner of the container is prominently displayed on the container.

The clause generally ensures that compliance with and enforcement of the Council's policy will be straightforward. In general, the Council intends to allow the placement of large containers on roads provided that safety issues are addressed.

Proposed clause 17 – Advertising on the road

This proposed clause 17 is designed to address the safety hazard caused by advertising signs, notices, or markers on the road.

The Council considers that this bylaw is necessary despite clause 5.5 of the Land Transport Rule: Traffic Control Devices 2004. Clause 5.5 appears designed to deal with signs or markings that have been applied or secured to the road surface, rather than signs placed on the road. The Council therefore considers that including this provision in the Bylaw is necessary to address the concerns with safety that can arise when such signs are placed on the road.

Proposed clause 18 – Window washers

This proposed clause 18 is to address concerns about safety in relation to people attempting to wash or clean the windows of vehicles stopped at intersections. The concerns about safety relate to both the disturbance of drivers while at intersections, and the safety of those washing the windows.

The clause therefore prevents any person from washing windows, or attempting to wash windows, of vehicles stopped at intersections.

Proposed clause 19 - Beaches

This proposed clause 19 is to stop motor vehicles using the beach unless they have the prior consent of the Council or are using a designated boat launching area to launch or land a boat.

Council considers beaches within the city as places motor vehicles generally should not use. Beaches are places used primarily for recreational purposes, not to park or drive motor vehicles.

Proposed clause 20 – Road Upgrade and/or maintenance work

This proposed clause 20 is to make it clear what notification process Council will follow when undertaking road works that will require the section of road affected to be clear of vehicles.

The aim is to provide residents affected with adequate notice no later than 48 hours before work commences.

Proposed clause 21 – Vehicle and container removal

This proposed clause 21 is to enable Council to remove any vehicle or thing in breach of this bylaw. It can also be used after giving notice under clause 20.

Proposed clause 22 - Defences

This clause has been proposed in recognition of the fact that it is not always appropriate that people be found liable under the Bylaw.

Any person prosecuted for an offence under the Bylaw has a defence if the act complained of was done in accordance with the instructions of an enforcement officer. An enforcement officer for the purposes of the bylaw may be either a sworn member of the New Zealand Police, or a person appointed as a parking warden by the Council.

In addition, the Council recognises that minor infringements of the traffic bylaw may occur in the course of trade but without causing any of the perceived problems, so a defence has been included in respect of the restrictions on coupon and metered parking for persons acting in the course of trade. However, the defence only applies if the vehicle is being used with due consideration for the safety and convenience of traffic and pedestrians.

Proposed clause 23 – Exemptions to this bylaw

The Council considers it appropriate that those who are acting in accordance with a valid traffic management plan approved by the Council should be exempt from the bylaw. This will apply to people who are carrying out road works on behalf of the Council, amongst others.

Proposed clause 24 – Fees and offences

The proposed clause 24 is to make it clear that Council may by resolution prescribe, abolish or amend fees made under this bylaw. To also make it clear that any person commits an offence against this bylaw who fails to comply with its requirements.

Council may also seek to recover from any person who breaches this bylaw.

This clause also enables Council by resolution to prescribe, abolish or amend infringement fines for breaches of this bylaw or any resolution made under it.

Proposed clause 25 – Restrictions by resolution

The proposed clause 25 is to make it clear that if an enactment or Land Transport Rule applies a Council resolution is not required.

4. **PROCESS FOR THE DEVELOPMENT OF THE PROPOSED BYLAW**

The special consultative procedure will end at 5.00pm on **Monday 25 September 2017**.

Hearings and meetings on the proposed bylaw will be open to the public, and people may speak to their submissions at the relevant committee meeting.

An analysis of all submissions will be presented to the relevant council committee for consideration. The proposed bylaw will then be referred to the Council for consideration and adoption.