

Bylaw Review Report 2023 – Cruising and Prohibited Times on Roads Bylaw 2014

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Introduction

This report reviews the [Cruising and Prohibited Times on Roads Bylaw 2014](#) (the bylaw). It summarises the legislative underpinning, main issues, and changes being recommended for public consultation. It includes the section 155 analysis required by the Local Government Act 2002.

Summary of legislative requirements for the bylaw review

Bylaw	<ul style="list-style-type: none"> • Cruising and Prohibited Times on Roads Bylaw 2014
Empowering legislation	<ul style="list-style-type: none"> • Land Transport Act 1998 (LTA) - section 22AB(1)(a) – controlling, restricting, or prohibiting cruising • Local Government Act 2002 (LGA) – section 145 – prohibited times on roads is made using the LGA general bylaw-making power: to protect the public from nuisance; to protect public health and safety; and to reduce the potential for offensive behaviour in public places
Bylaw adoption date	<ul style="list-style-type: none"> • First adopted on 27 May 2010. Adoption of current bylaw on 13 November 2014
Reason for bylaw review	<ul style="list-style-type: none"> • To comply with the LGA bylaw review requirement in section 159 of the LGA • The Cruising Bylaw 2010 was reviewed in 2014 to comply with the five year LGA review requirement (section 158), and became the Cruising and Prohibited Times on Roads Bylaw 2014. It is now due for its ten-year review under section 159 of the LGA.
Bylaw review deadline	<ul style="list-style-type: none"> • Review must be completed by 13 November 2024 (LGA requirement, s.159) • The review will be completed in 2023 in-line with the Council’s ten-year bylaw review timetable, which coordinates the review of bylaws across Council
Process for bylaw review	<ul style="list-style-type: none"> • The process for reviewing a bylaw is similar to the process of making a bylaw • The Council must make a series of determinations to complete the review, as set out in sections 155 and 160 of the LGA • The Council must determine the following: that a bylaw is the most appropriate way of addressing the perceived problem; that it is the most appropriate form of bylaw; and whether the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (section 155 of the LGA) • If, after the review, the Council wishes to make changes to the bylaw, it must undertake consultation on the proposed changes. If it does not want to make changes, it must still consult (section 160 of the LGA)
Next step	<ul style="list-style-type: none"> • This report summarises the review and proposed changes for consultation. • The accompanying Council report recommends that the Council adopt the revised bylaw for consultation.
Consultation timeframe	<ul style="list-style-type: none"> • Consultation is planned for June-July 2023, with hearings in August, and the final bylaw due to be adopted towards the end of 2023.

The bylaw is made under two different Acts, each with different bylaw-making powers and penalties.

Land Transport Act 1998 – cruising

This power is generally applied to roads that are multi-laned, high-volume roads. The power enables the Council to specify roads where cruising is prohibited, and the times and days when the prohibition applies.

Cruising	<ul style="list-style-type: none"> • Defined in the LTA – cruising means: driving repeatedly in the same direction over the same section of a road in a motor vehicle in a manner that—
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	<p>(a) draws attention to the power or sound of the engine of the motor vehicle being driven; or</p> <p>(b) creates a convoy that—</p> <p>(i) is formed otherwise than in trade; and</p> <p>(ii) impedes traffic flow</p>
Bylaw-making powers	<ul style="list-style-type: none"> Section 22AB(1)(a) of the LTA - controlling, restricting, or prohibiting cruising
Relevant legislation	<ul style="list-style-type: none"> If the stated purpose of a bylaw made under section 22AB(1)(a) of the Land Transport Act 1998 is “to control or restrict cruising or any associated activities”, then the bylaw is a qualifying bylaw under section 2 of the Land Transport Act 1998
Limitations	<ul style="list-style-type: none"> Can only apply to roads under the control of the Council (ie where the Council is the Road Controlling Authority - not to state highways or private roads)
Bylaw offence and penalty	<ul style="list-style-type: none"> A breach of the bylaw can result in an infringement notice of \$150, or a fine of up to \$1,000 on conviction (as set out in Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 – see entry for <i>22A(3A) Contravention, without reasonable excuse, of a bylaw made under section 22AB or 22AC</i>) The Police can issue a warning notice under section 22AF of the Land Transport Act 1998 for a breach of a qualifying bylaw (the bylaw meets the definition of a qualifying bylaw, as set out in the Land Transport Act 1998) A further breach of a qualifying bylaw (when a warning notice has been issued) within a 90-day period may result in impoundment of the vehicle for 28 days in accordance with section 96 (1AA) of the Land Transport Act 1998 The Police can issue an infringement notice, a warning notice, or both.
Enforcement	<ul style="list-style-type: none"> Can only be enforced by the Police

Local Government Act 2002 – prohibited times on roads

This power is generally applied to roads with a history of antisocial road user activities. The roads are generally in secluded areas or areas not commonly used at night. People in vehicles gather to undertake and encourage risky or unsafe driving behaviour, such as burnouts and street racing.

On roads where it applies, it prohibits night-time access by light vehicles¹, while providing exemptions for bona fide vehicle access to reduce the potential for these activities to occur. The restrictions apply from 10pm-5am. Some apply seven days a week, others only from Thursday-Sunday and on public holidays.

Bylaw-making powers	<ul style="list-style-type: none"> Section 145 of the LGA - A council can make a bylaw to protect the public from nuisance, to protect, promote, and maintain public health and safety, and/or to minimise the potential for offensive behaviour in public places.
Relevant legislation	<ul style="list-style-type: none"> If the stated purpose of a bylaw made under section 145 of the Local Government Act 2002 is “to restrict the racing of motor vehicles or any associated activities”, then the bylaw is a qualifying bylaw under section 2 of the Land Transport Act 1998
Bylaw offence and penalty	<ul style="list-style-type: none"> A breach of the bylaw can result in an infringement notice of \$750 (as set out in Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 – see entry for <i>Bylaws: Any provision of any bylaw involving the use of vehicles...</i>) The Police can issue a warning notice under section 22AF of the Land Transport Act 1998 for a breach of a qualifying bylaw (the bylaw meets the definition of a qualifying bylaw, as set out in the Land Transport Act 1998)

¹ Vehicles under 3,500kg are considered “light vehicles” in transport legislation, and include cars, vans, utes, SUVs and 4WDs. Vehicles above 3,500kg require a heavy vehicle licence.

	<ul style="list-style-type: none"> • A further breach of a qualifying bylaw (when a warning notice has been issued) within a 90-day period may result in impoundment of the vehicle for 28 days • The Police can issue an infringement notice, a warning notice, or both.
Limitations	<ul style="list-style-type: none"> • Can only apply to roads under the control of the Council (ie where the Council is the Road Controlling Authority - not to state highways or private roads)
Enforcement	<ul style="list-style-type: none"> • Can only be enforced by the Police
Other relevant legislation	<ul style="list-style-type: none"> • Section 113 of the Land Transport Act 1998 enables the Police to undertake enforcement in relation to breaches of transport legislation, including bylaws made under the Local Government Act 2002. As this bylaw relates to limiting vehicle access on roads, it has a transport element.

How we apply the prohibited times on roads clauses

Use of prohibited times on roads	<ul style="list-style-type: none"> • Used to limit vehicle access on specified roads, and at specified times, in order to reduce the potential for antisocial road user (ASRU) activities • Generally used on industrial and rural-city fringe roads with a history of ASRU activities, and on roads where we would not reasonably expect drivers to be at night (10pm-5am) without bona fide reason • Examples include remote or little-used roads at night, where enthusiasts may feel unobserved, such as no-exit roads in industrial areas and back roads on the rural-city fringe • Not appropriate on roads such as arterial roads, in residential areas, etc
Applies to vehicles under 3,500kg	<ul style="list-style-type: none"> • Vehicles under 3,500kg are considered “light vehicles” in transport legislation • Light vehicles include cars, vans, utes, SUVs and 4WDs (vehicles over 3,500kg are heavy vehicles and require a special licence)
Exceptions	<ul style="list-style-type: none"> • The restriction does not apply to access by some road users, including: owners or occupiers of properties with access from the road in question (and their bona fide visitors); emergency vehicles; trade or utility vehicles undertaking works; Council vehicles; and security service vehicles (as set out in the bylaw)

What the review of the bylaw has looked at

The review of the Cruising and Prohibited Times on Roads Bylaw has looked at:

- whether the bylaw is still needed;
- whether the bylaw is as clear and enforceable as possible, is doing what is enabled by legislation, and that it complies with all relevant legislation;
- legal matter relating to the bylaw, including the required assessment of the New Zealand Bill of Rights Act implications
- whether the roads it regulates are appropriate and current (listed in the registers to the bylaw)
- the Prohibited Times on Roads Policy.²

Bylaw development and history

The cruising bylaw-making power was added to the Land Transport Act 1998 via an amendment in 2009. This was due to widespread concerns about “boy racer” activities across New Zealand. It also led to a

² The Prohibited Times on Roads Policy is broadly covered in the clause-by-clause analysis associated with this report, and a replacement policy has been proposed for consultation. It stands alone as an attachment.

new power for the Police to confiscate and ultimately “crush” vehicles in some circumstances. Christchurch City was the first council to adopt a bylaw under the new powers; the **Cruising Bylaw 2010**, which prohibited cruising on all multi-lane roads in Christchurch.

The bylaw’s five-year review led to the adoption of the **Cruising and Prohibited Times on Roads Bylaw 2014**, which is the bylaw currently under review. In the 2014 review, the prohibited times on roads clauses from the Traffic and Parking Bylaw (the clauses), were moved into the Cruising Bylaw 2010, as both parts of the bylaw are designed to address antisocial road user issues. The clauses were first introduced and adopted by the Council in 2001, through an amendment to the **Traffic and Parking Bylaw 1991**.³

The bylaw enables the Council to add or remove roads regulated by the bylaw, by resolution. It also sets out consultation requirements for adding, removing or altering roads. Registers to the bylaw capture decisions made by the Council. Each road is listed in a register to the bylaw. Signs are installed on these roads to indicate the prohibitions.

The **Prohibited Times on Roads Policy** was adopted in 2008, amended in 2010 and reviewed in 2013. It is now out of date and is being duly considered as part of this bylaw review process. The policy was developed to set out how decisions to add roads would be made, and to “assist the community in understanding the process and criteria used”.

The two parts of the bylaw contain the following:

Cruising
<ul style="list-style-type: none"> • Purpose: “to control and restrict the cruising of motor vehicles” • That the Council may add or alter roads by resolution, after complying with consultation requirements • That the prohibition applies 7 days a week from 10pm to 5am • That the Council can resolve a time period that applies to cruising (currently four hours)

Prohibited times on roads
<ul style="list-style-type: none"> • Purpose: “to restrict the racing of motor vehicles, and activities associated with the racing of motor vehicles that may cause a nuisance to the public” • That the Council may add or alter roads by resolution, after complying with consultation requirements (and in-line with the Prohibited Times on Roads Policy) • That it applies to vehicles under 3,500kg • That there are exemptions for legitimate access (eg owners and operators, emergency vehicles, trade or service vehicles providing maintenance, Council vehicles, security vehicles) • Requirements related to installing signs

Is the bylaw still needed?

The bylaw provides a tool for the Police to address local antisocial road user behaviour.

Transport legislation (via the Land Transport Act 1998, and the Land Transport (Road User) Rule) provides a range of offences and tools for addressing things like sustained loss of traction (burn-outs and drifting),

³ Council report: *Operational Policies – Heavy Vehicle Parking in a Residential Area and Prohibited Times on Roads*, Regulatory Performance Committee Agenda, item 4, 6 November 2008
<http://archived.ccc.govt.nz/Council/agendas/2008/November/RegulatoryPlanning6th/OperationalPolicies.pdf>

unauthorised street racing, and unnecessary exhibitions of speed.⁴ There are also limitations around speed generally (speed limits), and on drug and alcohol use, as well as driver licensing conditions and demerit points. There are other tools the Police can use in relation to loud exhausts and other suspected non-compliance or safety issues in relation to modified vehicles.⁵ These rules and tools apply everywhere, but the bylaw only applies within the Council's district, and only on specified roads.

The Police have advised that the bylaw provides a useful tool for addressing antisocial road user activities, in addition to the other tools provided by transport legislation, and by other laws, such as the Summary Offences Act 1981.

Cruising

The Police acknowledge that the cruising definition in the Land Transport Act (under which the bylaw is made) makes it difficult to enforce due to the resources required.⁶ Nevertheless, it is useful, particularly on busy, multi-lane roads traditionally used to do laps, loops or aves - where drivers repeatedly drive the same stretches of road, rev their cars while waiting at the lights, take off together, and race each other. The bylaw provides a tool the Police can use to help address these behaviours. Some of this activity is about drivers, their occupants and their vehicles being seen, interacting with each other, and generally being social. Unfortunately, these activities are not viewed in a positive light by other road users or properties neighbouring the streets, with impacts such as noise, road and property damage, road safety issues, and accidents.

It is a reasonable assumption that if the Council were to remove the prohibition on cruising on specified roads, we would likely see an increase in these activities and negative impacts on other road users, and on nearby residents and businesses.

Prohibited times on roads

The prohibited times on roads clauses are related, but the activities are different in nature to cruising. The activities tend to happen on the outskirts of the city, where participants feel unobserved and enthusiasts gather to undertake similar, but more dangerous activities. Many of these activities are otherwise illegal, such as sustained loss of traction, applying substances to the road surface to reduce traction, street-racing, excessive speed, etc.

These gatherings generally have a large spectator element. The spectators may not be engaging in illegal or dangerous activity *per se*, but their presence supports and encourages the activities. Participants and spectators are known for filming and sharing these activities, which can further encourage more extreme activities. The spectators can cause safety issues by parking dangerously, gathering in large numbers, blocking the road and leaving dangerous litter (such as glass bottles). The gathering of a large crowd can escalate into disorder, violence and damage.⁷

⁴ These are all offences in the Land Transport Act 1998 - It is an offence to race on a road, or to take part in an unnecessary exhibition of speed or acceleration (unless the racing is otherwise authorised eg the road is closed) (LTA s.22A(1) and s.36A). A person must not, without reasonable excuse, operate a motor vehicle on a road in a manner that causes the vehicle to undergo sustained loss of traction (LTA s.22A(3) and s.36A))

⁵ Land Transport (Road User) Rule for excessive noise for on road vehicles. (rule 7.4). Green sticker / non-compliant vehicle: Section 115(1) of the LTA – Summary: *An enforcement officer believes that a vehicle does not comply with the regulations or the rules.* Pink sticker: unsafe vehicle: Section 115(3)(a) of the LTA – Summary: *An enforcement officer believes that a vehicle is not in a safe condition to be driven on the road.* Pink or green stickers are a form of warning notice that limits the use of the vehicle until it has been certified as compliant.

⁶ *Christchurch's anti-cruising bylaw 'toothless' - central city resident*, 30 June 2016, Stuff website, <https://www.stuff.co.nz/national/81602082/christchurchs-anticruising-bylaw-toothless--central-city-resident>

⁷ *Boy racer admits inciting violence during Aves Invasion in Christchurch*, 13 May 2019, Stuff website. <https://www.stuff.co.nz/national/crime/112678739/boy-racer-admits-inciting-violence-during-aves-invasion-in-christchurch>

Regulating and enforcing these activities can be difficult, as those participating are able to regroup and move to new locations after being moved on by the Police. However, the Police advise that the bylaw supports their ability to address activities and situations like this.

Current situation

The bylaw has been in place for some time, but the roads it applies to have changed over time. The roads are listed in two registers to the bylaw. There are currently:

- 50 roads (or parts of roads) where cruising is prohibited
- 82 roads (or parts of roads) with prohibited times on roads in place.⁸

The following timeframes apply to the different types of roads:

	Times it applies	Types of roads
Cruising	10pm-5am	Multi-lane, busy roads
Prohibited times on roads	10pm-5am	Industrial areas
	10pm-5am Thu-Mon, and public holidays	Rural-city fringe roads
	9pm to 5am, seven days a week	Boundary roads (with Selwyn)

Evidence of issues, data about complaints, infringements

Whether the roads currently regulated should continue to be regulated, or whether the regulation is working or not, is difficult to measure.

This is because, for roads already regulated by the Prohibited Times on Roads clauses, the **absence of issues**, complaints or evidence on a road might indicate that:

- the bylaw successfully acts as a deterrent;
- the bylaw is being actively enforced in an area and issues are being addressed;
- there is an under-reporting of issues; or
- that the bylaw is no longer needed in that location as it is no longer used for the activities.

We note that Police advise that some areas will be popular as gathering places quieten down, and then become hot spots again in subsequent years. This indicates that removing restrictions might lead to future issues or the need to reintroduce restrictions. We also note that there are seasonal variations, so a lack of recent activity is not necessarily an indicator of likely future activity.

Conversely, the **presence of issues**, complaints or evidence on roads regulated by the bylaw might indicate:

- that the bylaw is needed at that location;
- that the bylaw is not effective at addressing issues in that location;
- that the activities are happening when the bylaw does not apply (ie between 5am and 10pm);
- that events are not being report to the Police; or
- that Police enforcement has not been available to address the issues as they are occurring.

⁸ All of the roads where cruising or prohibited times apply are listed in registers. The registers are on the Council webpage with the bylaw: <https://www.ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/bylaws/cruising-and-prohibited-times-on-roads-bylaw-2014/>

Where Police enforcement resources are directed has an impact on the perceived effectiveness of the bylaw. We know that the activities move around, and that Police attendance is dependent on a complex range of factors, including available intelligence, resourcing and prioritisation.

We note that a number of different factors contribute to the attractiveness of a location and likelihood for it to become a gathering place for antisocial road user behaviour. These can include things such as:

- the road surface and width (a wide roadway with new asphalt can prove popular – this is common in new industrial developments with cul de sacs or wide roads to facilitate truck movements);
- perceived lack of scrutiny (areas with security or crime prevention cameras may be less attractive);
- recent Police activity (or lack of activity) in the area;
- the season (more activity tends to occur over the summer months);
- the history of the area (some areas have been popular for years, regardless of the bylaw);
- the influence of events, such as the recent Chrome event at Ruapuna, or more underground / informal events, like the Aves Invasion, bring car enthusiasts to Christchurch and can result in gatherings and activities.⁹

Both the Council and Police collect and hold data in relation to complaints. Separating out complaints about antisocial road user behaviour generally (vehicle noise, road damage, burnouts, dangerous rubbish, etc), from the limited activities the bylaw can regulate is difficult. Some of these issues may be more appropriately addressed using other tools (covered in the table below, or by enforcing existing law). For example, in relation to cruising, sequencing traffic lights to improve the flow of traffic along key routes can reduce the potential for cruising. Sequencing may reduce stoppage, revving and racing take-offs.

Infringements issued by the Police do not form a clear picture in relation to the bylaw, as a reduction in infringements may indicate enforcement resources being diverted to higher priority areas, rather than a reduction in issues. Conversely, stopping and speaking with a driver may not always result in an infringement, but it may help to address or reduce the issues. A high number of tickets may relate to one event or gathering.

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023 (to May)
Total infringements issued by Police	30	40	3	0 ¹⁰	15	32	11	82	31	14

Conclusions on whether the bylaw is still needed

Although we cannot absolutely determine the effectiveness of the bylaw, or its effectiveness on the roads it regulates, we have considered the comments from the Police (as the enforcer of the bylaw), the potential deterrent effect of the regulation and previous public support for the bylaw. We have concluded that the bylaw is still needed, and that revoking it (or removing a large number of roads) may lead to an increase in antisocial road user activities and negative impacts on residents, businesses and other road users.

⁹ [Thousands of boy racers expected at 'Aves Invasion' in Christchurch](#) (Stuff, 28 December 2018)

¹⁰ Data on infringements provided by the Police. Data missing for 2017. Location of infringement not recorded. Some data may be missing.

LGA Section 155 analysis

The following sections fulfil the requirements of the Local Government Act 2002 for the prohibited times on roads clauses, which are made under the LGA. The same assessment requirements do not apply to the cruising clauses in the bylaw, as they are made under the Land Transport Act 1998.

Most appropriate way of addressing the issues

The LGA requires that an assessment is undertaken to determine whether a bylaw is the most appropriate way of addressing the perceived problem (section 155(1) of the LGA).

The prohibited times on roads clauses are well established and were first included in a Council bylaw in 2001 to restrict car enthusiasts (including spectators) from congregating on roads and causing a nuisance to adjacent residents through their night-time activities.¹¹ Impacts are not confined to nearby residents, but also affect businesses and their premises, particularly in industrial areas.

The perceived problems the bylaw is seeking to address are associated with a range of antisocial activities that arise when car enthusiasts gather on remote or little-used roads at night, and where they may feel unobserved and free to dominate the road. These activities and impacts include: unsafe driving (speeding, racing, sustained loss of traction); damage to the road surface (from burnouts and substances on the road); vandalism and damage to adjacent properties; leaving dangerous litter (such as glass bottles) and damaged tyres; unsafe parking; vehicle noise and smoke; tampering with or removing traffic signs; and obstruction, intimidation and violence.¹²

On roads on the rural-city fringe, residents on isolated properties report feeling intimidated and concerned about the activities and impacts, especially when there is an element of intimidation or a threat to their property (such as fire risk from dry grass and sparks).

Many of these activities are already offences under transport (or other) legislation. However, it is the combination of the activities, participants and spectators that create a unique set of issues. By prohibiting vehicle access to key areas where these activities are known to happen, the potential for harm, nuisance and safety issues is reduced. It provides a way for the Police to address the associated activities.

Other ways to address the issues

When considering whether a bylaw is the appropriate way to address the issues, alternative approaches must be considered. The following may be considered as alternatives or to complement bylaw restrictions:

Parking or no stopping restrictions	Changing parking limits or putting no stopping restrictions in place may help to limit night-time congregation in some situations. May be appropriate in areas with night-time entertainment or activity, such as near fast-food outlets (successfully deployed in Sydenham, near Brougham Street)
Changes to road contouring or other traffic calming measures	Roading changes may help to lower speeds or to reduce the available road surface for ASRU activity (such as donuts) – examples include intersection upgrades, and kerb and channel reconstruction. This may be appropriate for residential areas, but may not be appropriate on roads that need to accommodate larger, heavy vehicles, such as trucks or buses

¹¹ Council report: *Operational Policies – Heavy Vehicle Parking in a Residential Area and Prohibited Times on Roads*, Regulatory Performance Committee Agenda, item 4, 6 November 2008

¹² For example, [Christchurch boy racer chaos: One arrest during 'Aves Invasion'](#) (NZ Herald, 31 December 2008),

Speed humps	Speed humps can work in some situations; however, they can cause new noise issues from gear changes and revving to manoeuvre over the hump(s)
Reduced speed limits	Reductions in the speed limit can be appropriate in some instances, impact on all drivers, and need to be considered in line with national guidance
Physically blocking access	Barrier arms or chains can be used to block vehicle access to car parking areas. This approach is not appropriate across public roads but can help with car park access roads at night, for example Physically blocking access to wide road margins where gatherings and activities are known to occur can be appropriate in some situations
Increased reporting	Reporting of incidents helps the Council or the Police to understand the issues, where and when they are happening, and how they might be addressed

Whether to apply the restrictions enabled by the bylaw to a specific road (or not) is assessed on a case-by-case basis. These assessment requirements are set out in the bylaw, and policy, and include public consultation.

Determining what the issue is, and whether the bylaw can help, is part of the decision-making process. As mentioned previously, there is a range of regulatory mechanisms already in place that are well understood. These include things like speed limits, licensing conditions, vehicle regulation, drug and alcohol limits, and other traffic offences related to reducing risky or dangerous driving behaviour. The Police have the power to bring criminal or road policing charges against those who undertake such activities.

Conclusions

The bylaw is appropriate for addressing the identified issues for the following reasons:

- It targets activities that are complex and multifaceted, and that have the potential to cause damage to the road, nuisance to neighbours, dangerous litter, injury to people and accidents
- The bylaw-making powers it uses are appropriate and have associated penalties (infringement fines and warning notices that can be issued by the Police)
- It applies only on specified roads, and on roads with history of antisocial road user activities
- It is only applied to specified roads at night when activities are likely to occur (predominantly 10pm-5am)
- It has been in place for over a decade and is supported by the Police.

Most appropriate form of bylaw

The LGA requires that an assessment is undertaken to determine whether a bylaw is the most appropriate form of bylaw (section 155(2)(a) of the LGA).

The form of the bylaw has been considered through the review process. The proposed replacement bylaw has been updated and improved, and now aligns with the Council's bylaw template. Changes to the structure and wording in the bylaw are discussed in the clause-by-clause analysis that accompanies this report.

The bylaw provides the mechanism to prohibit the activities on specified roads, and then the prohibition can be applied to specified roads by a resolution of Council. These decisions are then captured in registers to the bylaw. This means the roads can be added or removed without a full bylaw amendment, but will still comply with LGA consultation requirements before any changes are made.

It is well established by the Courts in New Zealand that any bylaw must satisfy the legal requirements of certainty, reasonableness, being *intra vires* (within legal powers) and not being repugnant to the laws of New Zealand. Where a council is given the power to “regulate” an activity, it can authorise a prohibition in part, but does not authorise a total prohibition. This bylaw is a partial prohibition, given it regulates certain roads at specified days and times, with exemptions for bona fide vehicle access.

The law also requires that the bylaw must be certain to a reader, in that a person reading the bylaw knows what it is they are allowed and not allowed to do. We consider that the bylaw has been drafted so that it contains “adequate information as to the duties of those who are to obey it”¹³ and the installation of signs on the prohibited roads clearly identifies to users of the roads the times when vehicle access is prohibited.

Although we are satisfied that there is statutory authority for the bylaw, and the bylaw is certain, we must also give consideration to whether there is another Act of Parliament or Regulation which expressly or impliedly authorises the activity the Council is regulating. The bylaw prevents people from using light vehicles on named streets during certain days and times, which makes unlawful the exercise of a right that is protected at common law (the right to use a road for the purposes of passage).¹⁴ Whether or not the bylaw could be considered repugnant to the general laws of New Zealand is likely to depend on the question of minimal impairment of the NZBoRA, discussed in more detail below.

New Zealand Bill of Rights Act 1990 implications

The LGA requires that an assessment is undertaken to determine whether a bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (section 155(2(b)) of the LGA).

The New Zealand Bill of Rights Act 1990 (NZBoRA) protects those freedoms and rights that are fundamental to a free and democratic society. We consider that there are NZBoRA implications relating to the Prohibited Times on Roads clauses in the bylaw, as the bylaw places limitations on people’s freedom of movement by limiting vehicle access on specified roads and at specified times.¹⁵

We do not believe other rights and freedoms provided for in NZBoRA have been restricted by the bylaw. Consideration was given to the bylaw having implications for freedom of association¹⁶ - however, we note that this right only applies to persons associating to participate in *lawful activities*. Given the purpose of this part of the bylaw is to stop street racing and associated activities, and legislation already makes those activities *unlawful*, we do not consider the freedom of association protected by NZBoRA to be limited.¹⁷

However, the rights contained in the NZBoRA are not absolute and section 5 enables reasonable limitations to be placed on the rights and freedoms protected by the Act, but only where those limitations are “demonstrably justified in a free and democratic society”. This indicates that Parliament

¹³ See *Pearce Delegated Legislation in Australia and New Zealand* (Butterworths, 1977), p 209, para 471.

¹⁴ The common law right to use a road for the purpose of passage and incidental matters is incorporated in section 18(1) of the NZBoRA. There it states that everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand. *Moore v MacMillan* [1977] 2 NZLR 81 at 90.

¹⁵ Note that there is no requirement to undertake a section 155 analysis for the parts of the bylaw that are made under the Land Transport Act (ie the cruising part). The requirement to undertake a section 155 analysis only applies to the prohibited times on road clauses, as they are made under the LGA.

¹⁶ Section 17 of NZBoRA 1990.

¹⁷ See section 22A Land Transport Act 1998 and sections 3, 4 and 5A Summary Offences Act 1981.

considers that reasonable limitations on the right may be acceptable. In deciding whether this is the case, the limitations should be proportional to the objective, and the “minimum impairment” (least restrictive limitation to achieve the objective). A bylaw that unnecessarily interferes with a right, without a corresponding benefit to the inhabitants of the locality in which it applies, may be deemed unreasonable. This means that the harms the bylaw seeks to address must outweigh the limitations on people’s freedom of movement.¹⁸

This part of the bylaw has been in place for over a decade, and the clauses were designed to restrict car enthusiasts (and their spectators) from congregating on roads, engaging in antisocial activities and causing a nuisance to nearby residents. This was later extended to protect areas without residents, but where the activities were impacting on businesses and roads, in industrial areas. It is clear that the objective of preventing these antisocial road user activities is important and we consider this outweighs any limitations on peoples’ movement.

Limitations within the bylaw

The following measures limit the regulatory reach of the bylaw and the roads it regulates, to ensure that it is applied reasonably:

- Policy guidance on when to consider applying restrictions, including:
 - evidence of antisocial road user activities
 - the problem has persisted for some time, and other enforcement has not been effective
 - complaints have been received by the Police, and the Police support the proposal.
- Consultation requirement before imposing restrictions
 - The bylaw contains a list of affected parties whose views may be sought, depending on the proposal, including: occupiers of properties, community or road user groups that may be affected; any other road controlling authorities that may be affected (nearby council or Waka Kotahi); the Police; and local community boards.
- Only specified roads, only specified times and days
 - Lesser restriction for rural-city fringe roads that have a through-function (Thursdays-Monday, 10pm to 5am, and the nights before and after public holidays)
 - Greater restrictions for industrial areas with no through-function
- Only applies to a specified class of vehicle (light vehicles, under 3,500kg), not to all vehicles
- Contains exemptions for legitimate access, including the following:
 - owners or occupiers to properties with access from the road in question (and their bona fide visitors); emergency vehicles; trade or utility vehicles; Council vehicles; and security service vehicles.

There is a rational connection between the prohibition of cars on roads known to be used for antisocial road user activities and the objective of limiting the impacts of those activities by prohibiting access at key times. The issue is therefore whether the right of free passage is impaired as little as possible to achieve the bylaw’s objective. This part of the bylaw does not prohibit freedom of movement completely, as there are alternative routes available to users who do not have bona fide access. The bylaw limits free movement at certain times and on certain roads, yet only in areas with a history of issues, and on roads where there is unlikely to be little need to use the road at night (eg industrial cul de sacs), noting that it provides exemptions for *bona fide* access. The nature of the activity means that unutilised back roads or areas away from people and other traffic are attractive. Activities tend to happen on roads that are close

¹⁸ Section 18 of NZBoRA protects freedom of movement

enough to the city for access, but are out of the city (rural-city fringe roads), or in parts of the city that are otherwise quiet at night (industrial areas).

The harms that are created by these activities vary, but broadly include impacts such as:

- noise and smoke from sustained loss of traction displays, such as donuts, slides and drifts;
- damage to the road surface, including temporary damage from substances being applied to reduce traction (creating a safety issue for other motorists), damage to kerbs and grass verges;
- alcohol related litter (glass bottles) and spent tyres from burnouts;
- nuisance and stress to nearby residents (including fear and intimidation);
- damage to nearby properties (particularly in industrial areas);
- impacts on other road users; and
- the threat of fire risk from sparks in areas with long dry grass.

Conclusions on the NZBoRA implications of the bylaw

The case law on reasonableness indicates that the Courts will carefully scrutinise bylaws that impact on the rights of the general public, and will weigh the benefits to the locality against the significance of the harm that the bylaw is seeking to prevent. Given these harms, and the types of roads regulated by the bylaw, we consider that the bylaw is a reasonable and proportional response to address the issues. Consultation on the bylaw review, and on any subsequent changes to the roads regulated by the bylaw, will gauge the public’s acceptance of these assumptions.

Review of the roads regulated by the bylaw

Summary

The roads regulated by the bylaw are listed in registers associated with the bylaw. There are currently:

- 50 roads (or parts of roads) where cruising is prohibited
- 82 roads (or parts of roads) with prohibited times on roads in place.

We do not recommend any changes to the roads regulated by the Cruising part of the bylaw.

We recommend the following changes to the roads regulated by the Prohibited Times on Roads part of the bylaw and listed in the Prohibited Times on Roads Register.

Proposed roads to be added to the Prohibited Times on Roads Register

Name or road or roads	Description of part of road	Analysis of issues / commentary
Establishment Drive, Depot Street, Headquarters Place, Quadrant Drive, Aruhe Road and Mania Road (Hornby South)	Entire length of roads	Industrial area. Evidence of antisocial road user activities. Raised by the community. Establishment, Depot and Headquarters have a history of ASRU activities. Some displacement has occurred to the newly developed area in Quadrant, Aruhe and Mania. Supported by Police.
part of Branston Street (Hornby)	Section from Boston Ave to Halswell Junction Road	Industrial section of this road. Evidence of antisocial road user activities. Raised by the community. Supported by Police.

Name or road or roads	Description of part of road	Analysis of issues / commentary
Watts Road (Sockburn)	Entire length of road	Industrial area. Evidence of antisocial road user activities. Raised by the community. Supported by Police.
Weaver Place (Sockburn)	Entire length of road	Evidence of antisocial road user activities. Short, no exit road, no through function. Relatively secluded area near the old Sockburn Pool. Exemptions in the bylaw allow for vehicle access for residents and their visitors. Raised by the community. Supported by Police.
part of Pound Road (Yaldhurst)	Pound Road eastern branch (extension of Pound Road east of the main alignment)	Rural-city fringe road. Evidence of antisocial road user activities. Clarification that this branch of Pound Road is included (the rest of Pound Road is already included)
Aviation Drive (Yaldhurst)	Entire length of road	Rural-city fringe road. Evidence of antisocial road user activities. Supported by Police.
part of Syd Bradley Road (Yaldhurst)	Legal road section	Rural-city fringe road. Evidence of antisocial road user activities. Supported by Police.
part of Jet Place (Harewood)	Legal road section	Industrial area. Evidence of antisocial road user activities. Supported by Police.
Lakes Way, Outlook Place, Lakeside Place (Harewood)	Entire length of roads	Industrial area. Evidence of antisocial road user activities. Area raised by the community. Supported by Police.

Proposed road to be removed from the Prohibited Times on Roads Register

Name or road or roads	Description of part of road	Analysis of issues / commentary
Blakes Road (Belfast) – part of road	Remove section of Blakes Road from Belfast Road to Radcliffe Road.	Blakes Road south of Belfast Road provides access to new residential subdivision areas. Recommend removal due to the need for residential access.
	Retain section of Blakes Road from Belfast Road to termination of Blakes Road in the north.	Blakes Road north of Belfast Road has not changed. It has no through function and has a history of antisocial road user activities. Recommend retaining this section.