

17 October 2016

The Committee Secretariat
Transport and Industrial Relations Select Committee
Parliament House
WELLINGTON

SUBMISSION OF THE CHRISTCHURCH CITY COUNCIL ON THE LAND TRANSPORT AMENDMENT BILL

1.0 Introduction

- 1.1 The Christchurch City Council would like to thank the Committee for the opportunity to comment on this Bill.
- 1.2 This submission is a staff submission and the Council does not wish to be heard in support of its submission.

2.0 Submissions

- 2.1 The Council has two matters it wishes to submit on:
- clause 42 of the Bill, replacing section 16A; and
 - clause 81 of the Bill, amending section 22AB(1)(b).

Clause 42/s16A – transitional period to continue existing s16A restrictions required

- 2.2 The Council acknowledges the changes proposed to section 16A, which will provide that the restrictions that can be imposed on heavy vehicles can only be temporary in nature. The current wording of section 16A does not contain the same limitations on road controlling authorities. Currently, there is no:
- reference to ‘temporary’ in the heading of the section;
 - requirement that in order to exercise the power in s16A a road controlling authority has to decide on reasonable grounds there is an urgent risk of damage to a road or danger to safety of road users;
 - time limit of 6 months on a restriction made under s16A.

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- 2.3 Council has existing restrictions on heavy traffic using residential neighbourhood streets made under s16A in a number of locations, principally for amenity/protection of the residential environment reasons. These restrictions are impacted by the proposed changes. It is not clear whether any existing restrictions imposed by Council will continue under the new s16A, but if they do the proposed six month limit would then cause the restrictions to expire.
- 2.4 Council understands that if it wants to make permanent heavy vehicle restrictions on roads in the future, or for reasons other than those specified in the new s16A it will need to use the bylaw-making powers in section 22AB(1)(c) and/or (zk).
- 2.5 There is a need to provide in the Bill for a transitional period to allow existing restrictions made by Councils (and other road controlling authorities) under the current s16A to continue, until new bylaws can be made to cover the existing restrictions.
- 2.6 The Council submits that a 12 month continuation of existing restrictions, which could not be made under the new s16A, should be provided for in the Bill. Twelve months is needed to ensure Councils have sufficient time to identify the relevant roads and follow all the steps required for consultation etc, for a new bylaw (or amendment of existing Traffic Bylaws).
- 2.7 This is not a situation where section 21 of the Interpretation Act 1999 applies, which is why the Council believes a specific transitional provision is needed:

“21 Powers exercised under repealed legislation to have continuing effect

Anything done in the exercise of a power under a repealed enactment, and that is in effect immediately before that repeal, continues to have effect as if it had been exercised under any other enactment—

- (a) that, with or without modification, replaces, or that corresponds to, the enactment repealed; and*
*(b) **under which the power could be exercised.***”

- 2.8 Although there is a replacement of s16A with modifications, as is set out above, some restrictions the Council has put in place, exercising the power in the current s16A, could not be exercised under the new s16A.

Clause 81/s22AB(1)(b) – proposed amendment not sufficiently clear/does not align fully with the Regulations

- 2.9 The Council is concerned that the amendment of this section does not sufficiently clarify what can be specified in a bylaw.
- 2.10 The reason given in the explanatory note for replacing the dollar amount of \$500 with \$1000 is stated to be: *“aligning the maximum fee for a breach of a bylaw provided for in the Act and in the Government Roding Powers Act 1989 **with infringement fees** in provisions already in the Land Transport (Offences and Penalties) Regulations 1999”.*

2.11 It may be that the reference to ‘infringement fee’ in the explanatory note is incorrect, because \$1000 is more commonly specified as the ‘maximum penalty on conviction for an individual’ in Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 (**Regulations**), and not the ‘infringement fee for individual’.

2.12 However, if the explanatory note reference is incorrect, then the wording of section 22AB(1)(b) will not be clarified, or aligned with, the penalty specified under the heading ‘Bylaws’ in Schedule 1 of the Regulations (there is no ‘maximum penalty on conviction for an individual’ specified for this matter in the Schedule, only a \$750 ‘infringement fee for individual’ for a breach of a bylaw, meeting the following (from page 68 of the 8 July 2015 reprint of the Regulations):

“Bylaws:

Any provision of any bylaw involving the use of vehicles, other than a provision—

(a) setting a speed limit; or

(b) imposing a parking prohibition or restriction; or

(c) for which any infringement fee is otherwise specified in this schedule.”

2.13 There are breaches of bylaws made under the Act that relate to offences set out in the Regulations and so would be a provision with an infringement fee that is ‘otherwise specified’ in the Schedule, and would not attract a \$750 infringement fee.

2.14 For example, clause 13 of Council’s Traffic and Parking Bylaw provides the power to create special vehicle lanes, and rule 2.3(1)(f) of the Road User Rule, together with the Regulations creates the offence for ‘unauthorised use of a special vehicle lane’. There is a \$1000 ‘maximum penalty on conviction’ but a \$150 ‘infringement fee’ in Schedule 1 of the Regulations.

2.15 The reference to the word ‘fine’ in section 22AB(1)(b), rather than infringement fee, seems to mean the alignment is intended to be with the ‘maximum penalty on conviction for an individual’ column in Schedule 1.

2.16 If that is the case then it should be made clear that section 22AB(1)(b) does not apply to or affect the infringement fee for Bylaws specified in Schedule 1.

2.17 The Police need clarity that they have the power to issue infringement notices, with the corresponding \$750 fee, for other bylaws involving the use of vehicles that do not have a provision specified elsewhere in Schedule 1.

3.0 Conclusion

3.1 Thank you again for the opportunity to submit on this Bill.

3.2. If you require clarification on the points raised in this submission or additional information, please contact Vivienne Wilson, Legal Services Unit, Ph 03 941-8963, Email: vivienne.wilson@ccc.govt.nz

Yours faithfully

A handwritten signature in blue ink, appearing to read 'D Adamson', with a long horizontal flourish extending to the right.

David Adamson
General Manager City Services
CHRISTCHURCH CITY COUNCIL