

3 July 2009

The Secretariat
Transport and Industrial Relations Select Committee
Parliament House
Wellington

Dear Sir/Madam

SUBMISSION TO:

- **VEHICLE CONFISCATION AND SEIZURE BILL**
- **LAND TRANSPORT (ENFORCEMENT POWERS) AMENDMENT BILL**

1.0 INTRODUCTION AND BACKGROUND

- 1.1 Hamilton City Council (HCC) would like to thank the Transport and Industrial Relations Select Committee for the opportunity to make a submission to both the Vehicle Confiscation and Seizure Bill and the Land Transport (Enforcement Powers) Amendment Bill.
- 1.2 HCC recognises that the issue of 'boy racers' is being faced by communities throughout the country. In Hamilton's case information from local Police indicates that there are around 200-300 cars related to boy racer activity in the city, with approximately 50 of these being 'hard core' drivers. At times there have also been 300-500 spectators watching on a Friday and Saturday night.
- 1.3 On Friday night, illegal street racers congregate on Te Rapa Straight at around 9pm where they use traffic lights as start and finish lines. They then race and do burnouts, while spectators are watching on both sides of the street. At around 11pm, they move to Greenwood Street and do burnouts in alleyways and small streets off it. At around 1am, a relatively small group (100 cars) will move to Tamahere/Temple/Holland Road to race and do burnouts. Racers have spotters who look out for Police. On Saturday night, a smaller group of racers congregates on Te Rapa straight.
- 1.4 From time to time, boy racers from Tauranga, Rotorua and Auckland come to Hamilton. Boy racers from Auckland often move in convoy (drag trains), but not those from Tauranga and Rotorua. This happens spasmodically (maybe up to once a month).
- 1.5 Illegal street racers are most commonly apprehended for traffic offences, including sustained loss of traction, noisy vehicle, unnecessary exhibition of speed or acceleration etc. In addition to traffic offences, illegal street racers are

also often involved in disorderly and antisocial behaviour. Of note is that ancillary offending, alcohol-related and minor criminal offences are more often linked to the spectators rather than the drivers.

- 1.6 In 2008 Waikato was the ninth highest District in terms of days where complaints about 'boy racers' were laid - 101 out of 365 days (Christchurch District recorded the highest number of complaints).
- 1.7 During 2008 Hamilton recorded 285 'boy racer' offences (compared with 320 in 2007 and 319 in 2006).

2.0 GENERAL COMMENTS

- 2.1 Although in general terms HCC supports the introduction of both the Vehicle Confiscation and Seizure Bill and the Land Transport (Enforcement Powers) Amendment Bill, it does have a number of comments which are outlined below.
- 2.2 HCC is also supportive of the Land Transport Amendment Bill (No. 4) which was passed by Parliament on 24 June 2009 and comes into force on 1 December 2009. The provisions of this new Act will provide enforcement officers with another tool to assist in addressing drug driving issues associated with 'boy racers'. Similarly HCC is supportive of further investigations being undertaken regarding the introduction of compulsory third party insurance in New Zealand.

3.0 LOCAL INITIATIVES

- 3.1 Some of the initiatives undertaken in Hamilton by the Police and HCC working in partnership that have had a positive influence on a number of 'boy racer' issues include:

- **Formation of the ISRU (Illegal Street Racing Unit)**

This is a dedicated unit established by the Police to address issues associated with Hamilton's 'boy racer' culture. It targets illegally modified cars and driver behaviour (including checking to make sure vehicles are certified as well as minimising disorder and property damage by 'boy racers'). The unit comprises six police officers and commenced operation in May 2007. A number of the team members have a specific interest and expertise in modified cars.

- **Congregation areas of 'boy racers'**

Since around 2000 a service lane on the western side of State Highway 1 leading into Hamilton's northern entranceway was used as a main congregation point for the city's 'boy racers'. The gathering of 'boy racers' in this area (particularly on Thursday, Friday and Saturday nights) caused a number of issues including illegal street racing, litter (primarily broken glass), property damage and other associated antisocial behaviour. In September 2007 gates were installed at the entry and exit points to the service lane - these are now locked each night. This initiative has significantly reduced the problem in this area.

- **Speed restrictions and road closures in the CBD**

In October 2008 Council began trialling a 30 km/h speed limit on the southern end of Victoria Street in Hamilton's CBD, which is the location of a large number of the city's restaurants. The trial is part of planned project for redevelopment of Hamilton's CBD. This is being undertaken in response to concerns from restaurant and business owners and the public regarding 'boy racer' issues (including cruising, noisy vehicles and other antisocial behaviour). The trial also includes other methods to alleviate this behaviour such as the introduction of various traffic

calming measures. For example, closing off certain streets at 'problem' times through the use of removable bollards and insertion of speed humps. Feedback from businesses and the public indicates that these measures are having some degree of success.

- **Enforcement of liquor bans in key areas**

A liquor ban for Hamilton's CBD was introduced in December 2007. Enforcement of this ban has resulted in a marked improvement in the behaviour of people in the CBD, particularly on Thursday, Friday and Saturday nights.

4.0 SPECIFIC COMMENTS

- 4.1 HCC advocates that the Land Transport (Enforcement Powers) Amendment Bill consider the issue of 'excessive noise' separately from that of 'cruising'. Currently the Bill focuses on cruising, which is defined as *'driving repeatedly over the same section of a road in a motor vehicle in a manner that (a) draws attention to the power or sound of the engine of the motor vehicle being driven or (b) creates a convoy that (i) is formed otherwise than in trade; and (ii) impedes traffic flow'*. It is HCC's view that excessive noise from a motor vehicle should be an infringement in itself, be it from the car's stereo, engine or exhaust.
- 4.2 HCC seeks clarification as to the definition of an enforcement officer in the Land Transport (Enforcement Powers) Amendment Bill and particularly whether a road controlling authority can warrant enforcement officers to enforce any new bylaw. Under the definition in the proposed Land Transport (Enforcement Powers) Amendment Bill, a 'qualifying bylaw' means a *'bylaw made by a road controlling authority under Section 22AB(1)(b) of this Act, Section 72(1)(d) of the Transport Act 1962, Section 684(1)(13) of the Local Government Act 1974, or Section 145 of the Local Government Act 2002'*.
- 4.3 Clarification is sought as to the definition of an enforcement officer under the proposed amendment, as the Land Transport Act 1998 and Local Government Act 2002 have different definitions. It is HCC's expectation that the Land Transport Act 1998 definition will apply, given that a bylaw of this nature would be more consistent with enforcement by the Police. However, clarification of this matter is needed, especially if the intention is for Road Controlling Authorities to warrant enforcement officers (refer Appendix 1 of this submission for the definitions outlined under both Acts).
- 4.4 HCC supports the provision for road controlling authorities to be able to write bylaws to deal with local issues of illegal street racing.
- 4.5 HCC is also concerned that Clause 22AC (1) (a) of the Land Transport (Enforcement Powers) Amendment Bill "Minister may amend, replace, or disallow bylaws" gives power to the Minister, by notice in the Gazette, to amend or replace any bylaw made by a road controlling authority. Should the Minister wish to retain some powers in this area then it is HCC's view that these powers should be limited to disallowing the bylaw as per Clause 22AC (1) (b). HCC would not want to have an 'amended' or 'replaced' bylaw imposed by the Minister as this bylaw/new clauses would not have been through the Special Consultative Procedure provisions of the Local Government Act 2002.
- 4.6 HCC suggests that a timeframe be added to Clause 128C (2) of the Land Transport (Enforcement Powers) Amendment Bill, to clarify when the vehicle inspection should take place. Clauses 128C (2) and (3) read as if the inspection

should be carried be out immediately but this is unlikely to be practical if the infringement takes place during the evening or weekends. An alternative would be to require that the inspection takes place within ten working days.

- 4.7 The Vehicle Confiscation and Seizure Bill (Clause 8 new Section 129A) states that *'The court must not order the destruction of the motor vehicle if it will result in extreme hardship to the offender or undue hardship to any other person, including to a substitute'*. HCC is concerned that the way this clause is worded may create a possible 'loophole' in the legislation as it currently stands.

5.0 CONCLUDING COMMENTS

- 5.1 HCC staff trust that the points made in this submission are helpful to the Transport and Industrial Relations Select Committee when considering all submissions to the Vehicle Confiscation and Seizure Bill and the Land Transport (Enforcement Powers) Amendment Bill.
- 5.2 HCC **does not wish to be heard** at any hearings that may be held by the Transport and Industrial Relations Select Committee in support of this submission.
- 5.3 If you require clarification or additional information on the points raised in this submission, please contact Alex Irvine (City Strategy Team Leader - email: alex.irvine@hcc.govt.nz, phone: 07 958 5855).

Yours faithfully

Michael Redman
CHIEF EXECUTIVE

APPENDIX 1 - DEFINITIONS OF ENFORCEMENT OFFICERS

Land Transport Act 1998 (Section 208)

(a) an enforcement officer for the purposes of—

(i) this Act:

(ii) Part 2 of the Land Transport Management Act 2003:

(iii) the Public Transport Management Act 2008; or

(b) A dangerous goods enforcement officer.

(2) The Commissioner may, by warrant, appoint any sworn member of the Police to be a dangerous goods enforcement officer.

(3) The Agency may, by warrant, appoint an employee of the Agency to be—

(a) an enforcement officer for the purposes of—

(i) any of Parts 4A, 4B, 6A, and 6B, including any rules or regulations made in relation to transport services, or sections 22B, 22C, 36B, 113(2)(f), 113A, 115, 118(6), 124, 128A, 128B, 135(1A), 138, and 139:

(ii) the Public Transport Management Act 2008; or

(b) A dangerous goods enforcement officer.

(4) Only persons who, in the opinion of the Commissioner or the Agency (as the case may be), are qualified by knowledge or experience to undertake enforcement of the functions specified in the warrant of appointment may be appointed under this section.

(5) Each enforcement officer or dangerous goods enforcement officer appointed under this section is to be supplied by the Commissioner or the Agency (as the case may be) with a warrant which specifies the functions that the officer is entitled or required to undertake.

(6) In specifying the functions of an enforcement officer or dangerous goods enforcement officer under this section, the Commissioner or the Agency (as the case may be) may specify which powers are or are not exercisable by the officer and impose conditions on the exercise of powers.

(7) The Commissioner or the Agency (as the case may be) may at any time revoke an appointment made by the Commissioner or the Agency under this section.

Local Government Act 2002 (Section 177)

Appointment of enforcement officer(1) A local authority may appoint persons to be enforcement officers in the district or region of the local authority in relation to any offence under this Act, including, without limitation,—

(a) offences against bylaws made under this Act:

(b) infringement offences provided for by regulations made under section 259.

(2) A local authority must issue warrants in writing to enforcement officers appointed under this section, specifying—

(a) the responsibilities and powers delegated to them; and

(b) the infringement offences in relation to which they are appointed.

(3) An enforcement officer must produce his or her warrant and evidence of identity whenever reasonably required to do so by any person.

(4) Enforcement officers may exercise the power to seize an object under section 164.