

10. WINSTON AVENUE – TURNING RESTRICTION

General Manager responsible:	General Manager City Environment Group, DDI 941-8608
Officer responsible:	Transport & Greenspace Unit Manager
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PURPOSE OF REPORT

This report is submitted to the Board in two parts:



1. Seeking a recommendation from the Board to the Council to approve that southbound Main North Road traffic to be prohibited from turning right into Winston Avenue as **Attachment 1**.
2. Seeking a resolution from the Board under delegated authority that Winston Avenue traffic to be prohibited from turning right into Main North Road as **Attachment 1**.

EXECUTIVE SUMMARY

3. The Papanui Road/Main North Road Bus Priority project was presented to the Shirley/Papanui Community Board at its meeting held on 16 April 2008, and then at a further extraordinary meeting held on 22 April 2008. At this latter meeting, the Shirley/Papanui Community Board recommended that staff consider restricting the access to Winston Avenue from Main North Road to left in and left out only.
4. The Papanui Road/Main North Road Bus Priority project was presented as a Joint Chairpersons report to Council at its meeting held on 15 May 2008, where Council approved the project to proceed to detailed design, tender and construction. The approved plans did not include the installation of a left in/left out only turning restriction for vehicles at the Winston Avenue/Main North Road intersection.
5. The construction of the Papanui Road/Main North Road bus priority project commenced on 17 August 2009, following the detailed design and procurement phases. The section of the corridor between Blighs Road and Langdons Road, which includes Winston Avenue, became operational on 23 October 2009.
6. Following completion of the construction works related to the bus priority project at this location, Council staff were advised by local business owners that motorists were ignoring the “No Right Turn” signs and continuing to access Winston Avenue in this manner, causing traffic congestion and safety issues on Main North Road. A subsequent review by Council staff noted that staff had not returned to the Community Board to seek agreement to include the implementation of the left in/left out only turning restriction within the scope of the bus priority project.

FINANCIAL IMPLICATIONS

7. The construction of the left in/left out only restriction has been included in the construction works for the Papanui Road/Main North Road bus priority project. Therefore there are no additional financial considerations to be considered in relation to the implementation of this turning restriction.
8. However, should the Shirley/Papanui Community Board not agree with the staff recommendation below to legalise the constructed left in/left out turning restriction at the intersection of Winston Avenue and Papanui Road, then the cost of removing the turning restriction is approximately \$15,000. This cost would be borne by the Papanui Road/Main North Road bus priority project, as a variation to the existing contract.

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

9. There is sufficient funding within the Papanui Road/Main North Road bus priority project to cover the variation, if required, to remove the left in/left out only turning restriction. The cost of the installation of the turning restriction was included within the detailed design, and the subsequent tender price for the overall project.

LEGAL CONSIDERATIONS

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

10. Complies with the Land Transport Rule: Traffic Control Devices 2004
11. Following the staff review referred to above in paragraph 5, the project team sought advice from the Council's Legal Services Unit to confirm the legality of the turning restriction at Winston Avenue. The Legal Services Unit confirmed the following:

"In my opinion, there is an issue about the validity of the installation of the left in/left out traffic restrictions on Winston Avenue. At this point I would not recommend the Police enforce the no-right turn restriction until the Shirley/Papanui Community Board has ratified the installation of the restrictive access to Winston Avenue."
12. According to the Council's Delegations Register (December 2007), Community Boards have delegated powers as follows:
 - (a) 4(d) - The installation of traffic islands, roundabouts and traffic restraints on roads (p4);
 - (b) 7 - To make any changes to road markings after consultation with stakeholders (p4);
 - (c) 8(a) - To control, by the methods (signs, markings, etc) listed below, traffic movement on any roads, or within car parks or in other areas controlled by the Council and used for vehicle;
 - (d) No Right Turn (clause 14(1) of the Christchurch City Council Traffic and Parking Bylaw 2008);
 - (e) No Left Turn (clause 14(1) of the Christchurch City Council Traffic and Parking Bylaw 2008).
13. Therefore Community Boards have the authority to determine the installation of traffic islands and the turning restrictions such as those installed at the Winston Avenue/Main North Road intersection.
14. The Legal Services Unit concluded the following in relation to the Winston Avenue turning restriction:
 - (a) In April 2008, the Shirley/Papanui Community Board did not approve the installation of turning restrictions in and out of Winston Avenue. However the Board report notes that staff agreed to consider restricting access to Winston Avenue from Papanui Road to left in and left out only. It is not clear whether the Board intended staff to report back to the Board once staff had considered the matter. However, arguably this was implied. What is clear is that the Board only asked staff to consider the matter of the traffic restrictions. The Board did not authorise staff to proceed to installing the traffic restrictions once staff had considered the matter.
 - (b) *"In my opinion, there is a good argument that restrictive access to Winston Avenue, and the no right turn signs have been installed by staff without delegated and therefore lawful authority."*
 - (c) What is the consequence of acting without lawful authority? In terms of administrative law, a decision is "valid" until it has been set aside by a court. In *Murray v Whakatane District Council* [1999] 3 NZLR 276, the High Court noted as follows:
 1. *It is settled law that every unlawful administrative act, except perhaps in extreme cases of clear usurpation of power, is operative until set aside by a court. Even where a decision is challenged by a plaintiff entitled to do so in appropriate legal proceedings, the court is not compelled to set aside the decision: Smith v East Elloe Rural District Council [1956] AC 736 at 769 Lord Radcliffe; A J Burr Ltd v Blenheim Borough [1980] 2 NZLR 1 at 4 per Cook J. The validity of a decision is therefore a concept which is "relative, depending upon the court's willingness to*

grant relief in any particular situation." Wade, Administrative Law 7th Ed, p.341: Martin v Ryan [1992] 2 NZLR 209.

- (d) This means that the restrictive access to Winston Avenue, and the installation of the no right turn signs are technically valid until a Court sets aside the "decision" taken by staff to install those measures.
- (e) However, given that Council officers are aware of the issues about the authority for these restrictions, in my opinion the best course of action is to ask the Community Board to ratify the installation of the restrictions.
- (f) In the meantime, I would advise the Police not to enforce the no right turn restrictions. This is **not a case** where the Council considers that it has acted lawfully and is defending its position. Here the Council knows of the defect in procedure.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

- 15. The recommendation aligns to the Council's Streets and Transport safety programme 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?

- 16. As above.

ALIGNMENT WITH STRATEGIES

- 17. The recommendations align with Council strategies for Road Safety Strategy 2004.

Do the recommendations align with the Council's strategies?

- 18. As above.

CONSULTATION FULFILMENT

- 19. The turning restriction at Winston Avenue has not been formally consulted on with the community either as part of the bus priority project or as a separate issue. During the construction of the Papanui Road/Main North Road bus priority project, some informal discussions were held with local businesses, including the intersection safety measures. There was an understanding and general support for the left in/left out only turning restriction at Winston Avenue.
- 20. It is noted that the local community raised the issue of non-compliance with the turning restriction based on their observations and requested enforcement of the "No Right Turn" into and out of Winston Avenue.

STAFF RECOMMENDATION

It is recommended that:

- 1. The Community Board recommend to the Council that it resolve that southbound Main North Road traffic be prohibited from turning right into Winston Avenue
- 2. The Community Board resolves under delegated authority that Winston Avenue traffic be prohibited from turning right into Main North Road

CHAIRPERSON'S RECOMMENDATION

That the staff recommendation be adopted. Meets the Board objective of having safe streets.