

## 6. COUNCIL TEMPORARY FREEZE ON CYCLEWAYS

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### PURPOSE OF REPORT

1. The purpose of this report is to seek clarity around the Council resolutions of 16 June 2005 and 6 October 2005 on cycleways, to raise some practical implications of those resolutions, and to seek clear direction from Councillors on 'where to from here'.
2. This report has been updated to reflect the issues raised and discussion at the 15 November 2005 workshop. It includes amended recommendations.

### EXECUTIVE SUMMARY

3. The June resolution to place a temporary freeze on cycleways was made at short notice, with no considered staff advice to hand, and in anticipation of a seminar to provide that information which would enable the freeze to be lifted shortly thereafter. The seminar was held in August and staff prepared a report reflecting the outcome of the seminar. On 6 October when the Council considered the report the resolution did not lift the cycling freeze. A workshop was held on 15 November and while many issues were raised, these issues focused predominantly on the implementation of the cycle strategy rather than the content of the strategy itself.
4. The result is that there continues to be some serious issues and implications which arise from the resolutions passed by the Council to date. These include the indeterminate length of the freeze, the potential effects on the capital budget and programme and legal issues which present potential risks to the Council.
5. This report provides a summary of the current state of play, including Councillor input at the Councillor workshop on 15 November and staff advice and recommendations.

### STAFF RECOMMENDATIONS

It is recommended that the Council:

1. (a) Receive the report.
2. (a) Proceed with the marketing review of the Cycling Strategy.  
(b) Note that staff will provide a report by 15 December 2005 on the issues and questions raised at the workshop on 15 November 2005.  
(c) Note that there is a process in place to ensure elected member input prior to roading projects being signed off.  
(d) Note that work on the value of cycle lanes on Riccarton Road is effectively underway.
3. Revoke the Council resolutions of 16 June and 6 October 2005 and lift its temporary freeze on cycleway capital projects.

## BACKGROUND ON COUNCIL TEMPORARY FREEZE ON CYCLEWAYS - CLARIFICATION

6. On 16 June 2005 the Council resolved ***‘that a temporary freeze be imposed on the letting of tenders for cycleway capital projects, pending the outcome of the forthcoming seminar to review the current financial programme for cycleways’.***
7. On 16 August 2005 the Council held its seminar on cycleways and instructed staff to prepare a report, incorporating ideas from the seminar and recommending an end to the temporary freeze on the letting of tenders for cycleway capital projects.
8. On 6 October 2005 the Council considered the staff report which recommended:
  - (a) ***That the Council lift its temporary freeze on cycleway capital projects.***
  - (b) ***That staff report back to the Liveable City Portfolio Group within two months on the outcome of the marketing review and updating the Cycle Network Plan.***
9. The Council did not pass the recommendation to lift the freeze and resolved:
  - (a) ***That staff report back to the Liveable City Portfolio Group within two months on the outcome of the marketing review and updating of the Cycle Network Plan.***
  - (b) ***That the value of the cycle lanes on Riccarton Road be investigated.***
10. The Council’s current position is reflected in its resolution of 16 June 2005 that a *“temporary freeze be imposed on the letting of tenders for cycleway capital projects ...”* As the Auditor-General noted in his letter of 12 October 2005 regarding the Civic Offices projects, the words in resolutions need to be given their ordinary meaning. In this case it is a question of interpreting the phrase “temporary freeze”.
11. “Temporary” is defined as meaning:
  1. Lasting only a short time; transitory
  2. Not permanent; provisional
12. The resolution regarding the temporary freeze has now been in place for five months and the question needs to be asked as to when the freeze is going to be ended, or some other change to the Council’s resolution is going to be made. There is a real risk here that what has begun as a “temporary freeze” becomes a de facto permanent freeze.
13. As the Auditor-General also noted in his letter, when decisions such as a “temporary freeze” resolution is made, their context and practical implications need to be considered at the time of making the resolution.
14. The workshop held on 15 November raised the following issues and questions:

Cycle Lanes

  - Consider each road re safety
  - Is an alternative nearby?
  - If off-road available, no on-road

Specifications

  - Width requirements?
  - Lanes narrow at intersections
  - Red paint (where, how?)

Other

  - Dual-use footpaths / bus lanes
  - Swap parking / cycle lanes
  - Rubberised surfaces
  - Arterials first, then corridors for alternative modes

- Stronger separation of modes on roads
- Develop cycle / ride bus infrastructure
- Bells compulsory?
- Education effective
- Map of 'gaps'
- Wider consultation
- Transport plan maps

Schools – what more can we do to increase attractiveness?

Capital Programme – Reprioritisation for all modes

Legislation / plans – if not achieving goals, change needed (Government, ECan)

Retailers in strips on road – parking being lost, hurts business

Questions

- Funding
- Total costs
- Accurate usage information
- Scooters on footpaths
- Speed limits (30km/h)

15. Staff expressed the view that the issues raised in the 15 November workshop and summarised above can all be accommodated within the current strategy. An undertaking was made by staff to provide a high level response to the issues and questions by 15 December 2005.
16. The sign off process with regard to roading projects was discussed. The process is that following consultation and option development, all projects are signed off by either a Community Board, the Council, or both. This provides the opportunity for changes to be made as long as they are in accordance with best practice, safety and design standards. All projects are safety audited before designs are finalised.

## **ISSUES AND IMPLICATIONS**

### **The Indeterminate Length of the Freeze**

17. The Council resolution imposes a 'temporary' freeze over tendering any capital projects with cycleways. While the resolution states this is for a temporary period, there is no effective Council resolution to establish what is needed to ensure that it is only temporary.
18. The current cycling strategy is in a state of limbo with it being unclear as to what the Council's position is with respect to the strategy going forward. During debate over the cycleways temporary freeze some Councillors have mentioned reviewing the entire strategy. To complete an unscheduled full review of the strategy would take approximately 15 to 18 months.
19. Alternatively if the Council simply wants to see specific issues addressed within the current Strategy, the Council could resolve to consult directly on the proposed changes to its current Cycle Strategy as a partial review. To do this it is fundamental that the Council debates and agrees what aspects of the current Strategy it would like changed. This would also require at least six months to complete.
20. In either case the Council would need to revisit priorities it has already assigned to its development of current Council strategies to fit the review in with the strategy development and review programme.
21. Given the discussion at the workshop, Council officers believe that we can now progress the marketing review.

## Effects on the Capital Budget and Programme

22. The freeze has now been in place for five months. If it is continued the following effects will ensue:
- Projects within the 2005/06 financial year and in the Council's current LTCCP which are currently stalled as a result of the temporary freeze equate to approximately \$500,000. These projects will need to be deferred or substituted this financial year. There are, however, associated risks around doing this without appropriate consultation; refer Risks and Legal Issues section below.
  - Capital roading projects where on-road cyclists' needs are apparent, or where they have been consulted on and where as a result cycle lanes are proposed in the design, are proceeding. However they do not include cycle lanes, but kerbside lanes will be widened appropriately to permit shared use by motor vehicles and cyclists.
  - Increased unbudgeted capital costs may be incurred if capital roading projects proceed and cycleways need to be incorporated at a later date.

## Review of Value of Cycle Lanes on Riccarton Road

23. The Council resolved 'that the value of cycle lanes on Riccarton Road be investigated'. A current project is being processed to investigate an integrated traffic management plan for Riccarton Road. The project is currently at the stage of identifying issues to be addressed. Staff believe the current course of action is entirely consistent with the resolution to assess the value of cycle lane provision and this will be included as part of the report back on options for addressing the issues.
24. Riccarton Road has been identified as a candidate for development as a future bus priority corridor but is not included in the initial set of corridors and implementation on Riccarton Road will be some years off. This future bus priority project will of necessity reassess and evaluate all options and again is consistent with the Council's resolution.
25. It is the view of Council officers that the above work will fulfil the resolution "that the value of the cycle lanes on Riccarton Road be investigated".

## Risks and Legal Issues

26. Although the Council has adopted the Strategy it is not bound to comply strictly with it as it is not directly bound to a LTCCP commitment. In other words the Strategy was adopted by a resolution of the Council (29 July 2004) and does not form part of the LTCCP. Even if it does form part of the LTCCP section 96(2) of the LGA 2002 applies.
27. Section 96 LGA 2002: *Effect of resolution adopting long-term council community plan or annual plan:*
1. *The effect of a long-term council community plan and an annual plan adopted by a local authority is to provide a formal and public statement of the local authority's intentions in relation to the matters covered by the plan.*
  2. *A resolution to adopt a long-term council community plan or an annual plan does not constitute a decision to act on any specific matter included within the plan.*
  3. *Subject to section 80, and except as provided in section 97, a local authority may make decisions that are inconsistent with the contents of any long-term council community plan or annual plan.*
  4. *No person is entitled to require a local authority to implement the provisions of a long-term council community plan or an annual plan.*

28. Subsection 2 provides that although the Council may adopt an annual plan or LTCCP this does not impose a condition that the Council must complete nor begin any activity specified in that plan. However, this is constrained by section 80 which provides that the Council cannot act inconsistently with adopted plans without first identifying the inconsistency, the reasons for it and whether a change to the plan will be made.
29. Section 80 provides:
- “(1) if a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this act or any other enactment, the local authority must, when making the decision, clearly identify – (a) the inconsistency, and (b) the reasons for the inconsistency, and (c) any intention of the local authority to amend the policy or plan to accommodate the decision.*
30. The cycle strategy is part of the Regional Land Transport Strategy which the Council has adopted under the Land Transport Act 1998 and operates within that statutory framework. In addition the provision of cycling facilities is provided for in the Long Term Council Community Plan and it is the opinion of officers that the decision of the Council to have a “temporary freeze” with no end date provided for by the Council means that that the Council is at serious risk of breaching Section 80 in that the decision to have the freeze is “significantly inconsistent” with policies and plans the Council has already adopted.
31. The Council is clearly entitled to change its position regarding cycling facilities. However, as Section 80 requires in making its decision to do that it must identify inconsistency with the existing plans and policies, the reasons for that inconsistency and the Council’s intention to amend those policies and plans. The full Council must settle on the reasons for the inconsistency as required by s.80.
32. Following the workshop of 15 November 2005 the staff advice is the issues raised by Councillors have not identified inconsistencies, for the purposes of Section 80 with the Cycling Strategy such as to justify the continuation of the temporary freeze.
33. To date the Council still has not met the Section 80 and will continue to be in breach of Section 80 if it does not lift the freeze. If the Council wants to review the Cycling Strategy it would need to
- (a) lift the temporary freeze; and
  - (b) debate, identify, and resolve what they consider to be the significant inconsistencies between the current Cycling Strategy and Councillors’ preferred outcomes.
34. Also, the reasons for those inconsistencies would need to be identified by Councillors and they would need to resolve that they intend to amend the Cycling Strategy to accommodate their preferred outcomes (refer to paragraphs 19 and 20 for associated timeframes).
35. Also this ongoing breach leaves the Council open to a successful challenge by way of judicial review of all its resolutions regarding the freeze.