

7. CHRISTCHURCH CITY COUNCIL ENFORCEMENT OF PARKING AND SPECIAL VEHICLE LANES ON STATE HIGHWAYS

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Inspections and Enforcement Unit Manager
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PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council give its support in principle to accepting the delegation of enforcement of parking and special vehicle lanes on State Highways from the New Zealand Transport Agency (NZTA).

EXECUTIVE SUMMARY

2. On 1 July 2008, the Christchurch City Council Traffic and Parking Bylaw came into force. This replaced the Traffic and Parking Bylaw 1991.
3. In 1991, Transit New Zealand delegated to the Christchurch City Council, for the purposes of the Christchurch City Traffic and Parking Bylaw 1991, control of all state highways other than those declared as motorways, within the Council's district. That delegation is now out of date because of its reference to the earlier 1991 Bylaw.
4. At its meetings held on 15 May 2008 and 12 June 2008, the Council approved the Papanui / Main North Road, Colombo Street / City South and Queenspark bus priority projects to proceed to detailed design, tender and construction. The key to success of the implementation of these bus priority projects is education and enforcement.
5. Following these first three Council corridors, a further seven Council corridors are also recommended for development. These are:
 - Hornby Mall to / from Exchange, via Riccarton Road
 - New Brighton to / from Exchange, via Pages Road
 - Sumner to / from Exchange, via Ferry Road
 - Oaklands to / from Exchange, via Lincoln Road
 - Main North Road to / from Exchange, via Cranford Street
 - Orbiter
 - MetroStar
6. In September 2008, the Parking Enforcement Team had nine officers trained and warranted by the NZ Police to undertake enforcement of moving violations in special vehicle lanes, in addition to the parking enforcement duties already carried out by this team.
7. In November 2008, NZTA received approval for three bus priority projects to proceed from the NZTA Board. These three bus priority projects are the Main North Road Bus Priority Project (QEII Drive – Factory Road), Main South Road Bus Priority Project (Sockburn Roundabout to Parker Street), and the Travis / Bassett Intersection improvement.
8. **Attachment 1** is a map that details all Council bus priority routes and the proposed NZTA routes as outlined in the Transport Regional Implementation Plan (Canterbury Regional Land Transport Strategy 2008-2018).
9. In a letter dated 10 February 2009, shown in **Attachment 2**, NZTA requested that the Council undertake enforcement of parking and special vehicle lanes on State Highways. As the general public do not differentiate between travelling on a Council controlled road and an NZTA controlled road, it was considered important that a consistent approach to enforcement is applied to ensure the successful operation of the bus priority projects.

10. A meeting was held between Council staff and NZTA staff on 18 March 2009 to discuss a proposed delegation, proposed enforcement process and associated costs and revenue. As a result of this meeting, the following was agreed:
 - The General Manager Regulation and Democracy Services would seek Council support for accepting a delegation to undertake enforcement of parking and special vehicle lanes on State Highways.
 - NZTA staff will draft bylaws for the special vehicle lanes on State Highways and seek the approval of the NZTA Board for these bylaws.
 - If this approval is given by the NZTA Board, NZTA will give delegation to the Council to undertake enforcement of special vehicle lanes on State Highways.
 - When this delegation is accepted by the Council, the Council will need to apply for amended warrants for its enforcement officers from the Commissioner of Police to undertake enforcement of special vehicle lanes on State Highways.
11. The first NZTA bus priority project, Main North Road (QEII Drive to the Motorway), is anticipated to be operational in October 2009. Note this is the first known instance where NZTA has sought to delegate the enforcement of parking and special vehicle lanes on State Highways to another road controlling authority.

FINANCIAL IMPLICATIONS

12. Subject to formal confirmation from NZTA there is agreement in principle that the Council will retain the revenue collected from undertaking enforcement on the State Highways, and on this basis it will be a cost-neutral operation for the Council. If it appears that the enforcement operation on State Highway is going to run at a loss, then the Council will need to advise NZTA early on of this situation. It is envisaged that the Council and NZTA will share the loss in a proportion that matches the length / ownership of the road. If substantial profits are realised the additional education will be undertaken in an attempt to achieve a higher level of compliance.
13. It is proposed that the agreement that accompanies the delegation from NZTA addresses these financial implications detailed in paragraph 11 above.
14. The cost of enforcement of special vehicle lanes along the first three Council bus priority corridors is approximately \$320,000 p.a. (FTE costs and equipment) Council staff have investigated the enforcement process undertaken in Auckland and have forecast a revenue from non-compliance of approximately \$800,000 p.a. As the levels of non compliance are unknown at this stage, any additional cost of providing enforcement services on the NZTA bus routes cannot be accurately determined. It should be noted, however, that as the additional Council bus routes become operational, any decision by Christchurch City Council to enforce NZTA bus routes will likely result in the need for additional enforcement staff sooner than we would otherwise have been needed.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

15. The delegation to enforce parking and special vehicle lanes on State Highways is not included in the 2006-2016 LTCCP budgets.

LEGAL CONSIDERATIONS

16. On 1 July 2008, the Christchurch City Council Traffic and Parking Bylaw came into force. This replaced the Traffic and Parking Bylaw 1991. Clause 3(1) provides that the Bylaw applies generally to all roads under the care, control and management of the Council. Clause 3(2) states that the Bylaw does not apply to roads under the care, control and management of Transit New Zealand (now NZTA) unless the Council and NZTA have entered into an agreement providing that the Bylaw applies to those roads.

17. In 1991, Transit New Zealand subsequently resolved pursuant to section 62 of the Transit New Zealand Act 1989, that it delegate to the Christchurch City Council, for the purposes of the Christchurch City Traffic and Parking Bylaw 1991, control of all state highways other than those declared as motorways, within the Council's district. That delegation is now out of date and it would be preferable for a new delegation to be put in place that refers to the Traffic and Parking Bylaw 2008 with respect to parking enforcement.
18. Any such delegation by NZTA must be made under the Government Roading Powers Act 1989 (GRPA) (formally the Transit New Zealand Act 1989). Section 62(1) provides that all or any of the functions, duties, and powers of construction, maintenance, and control conferred on NZTA by the GRPA with respect to any State highway or portion of a State highway may be delegated by NZTA to the territorial authority in whose district the State highway or portion of it is situated. Section 62(3) provides that any delegation under section 62(1) may be made only with the consent of the territorial authority concerned.
19. Section 61 of the GRPA sets out the powers and duties of NZTA in relation to State highways. Section 61(1) states that NZTA has the sole powers of control for all purposes, including construction and maintenance, of all State highways, and any such powers are exercisable only pursuant to the GRPA. Section 61(3) states that NZTA may from time to time, by notice in the Gazette, make bylaws with respect to any State highway on the subject-matters referred to in paragraphs (13) to (20) and (38 to 41A) of section 684(1) of the Local Government Act 1974.
20. NZTA also has the bylaw-making powers of a local authority in relation to roads as set out in section 72 of the Transport Act 1962.
21. Section 63 of the GRPA sets out further details about delegations. It should be noted that once made, a delegation may at any time be revoked or varied by resolution of NZTA (section 63(2)). While the powers of NZTA are delegated to the Council, the Council must exercise the delegated powers in its own name and is liable accordingly. Neither NZTA nor the Crown are answerable for any act or default of the Council in the exercise of any powers so delegated. NZTA does not have power to exercise any of the powers so delegated without first revoking that delegation pursuant to section 63(2).
22. Section 64 provides that the Council may surrender all or any of such delegated functions, duties, or powers to NZTA by giving notice in writing to that effect not later than six months before the end of the financial year of NZTA. This notice takes effect on the commencement of the following financial year.
23. In terms of enforcement, the Transport Act 1962 provides that parking wardens have the power to enforce any offence involving parking in any portion of a road in breach of any Act or regulation, or of any bylaw made under the authority of section 72.
24. If a person is appointed as an enforcement officer under the Land Transport Act 1998, then that person also has the power to enforce moving vehicle offences specified in bylaws and rules made under the Land Transport Act 1998. Enforcement officers (who are not sworn members of the Police) under the Land Transport Act 1998 must hold a warrant from the Commissioner of Police. Under section 208(4) of the Land Transport Act 1998, only persons who, in the opinion of the Commissioner, are qualified by knowledge or experience to undertake enforcement of the functions specified in the warrant of appointment may be appointed under section 208. The warrant must specify the functions that the person holding the warrant is entitled to undertake.
25. With respect to infringement fees collected for parking enforcement, section 43 of the Transport Act 1962 provides that generally all infringement fees are payable to the Crown. However, the Council is entitled to retain-
 - (a) All infringement fees received by it in respect of offences involving:
 - (i) Parking in breach of a bylaw of the Council in any portion of a road where parking is for the time being governed by the location of parking meters placed pursuant to a bylaw of the Council; or

- (ii) Parking in any other portion of a road in breach of a bylaw of the Council prohibiting parking for a period in excess of the period fixed by the bylaw where the infringement notice in respect of the offence was issued by an officer or other person appointed by the Council; and
 - (b) All towage fees received by it; and
 - (c) Such portion of all other infringement fees received by it as the Minister of Finance from time to time approves.
25. With respect to infringement fees collected for breaches of the Land Transport Rules relating special vehicle lanes, section 141 of the Land Transport Act 1998 again provides that generally all infringement fees are payable to the Crown. However, under section 141(3A), the Council is entitled to retain the portion of the infringement fees received by it under the Land Transport Act:
- (a) that the Minister of Finance from time to time approves; and
 - (b) that are fees received in respect of an infringement offence in relation to the use of a special vehicle lane.

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

27. Yes. Once a new delegation has been put in place, applying parking restrictions to State Highways will be relatively straightforward under the Traffic and Parking Bylaw 2008. Clause 5 of the Traffic and Parking Bylaw sets out the powers of the Council in relation to parking, stopping and standing restrictions. Clause 5 is authorised under section 72 of the Transport Act 1962. The powers in clause 5 may be exercised by resolution.
28. The Council's special vehicle lanes are provided for under clause 13 of the Traffic and Parking Bylaw 2008 and are recorded in the Second Schedule to the Bylaw. Clause 13 and the Second Schedule are authorised by section 72 of the Transport Act 1962. Any amendments to the Second Schedule must be undertaken by special consultative procedure because the Schedule is part of the Bylaw. However, NZTA have indicated that it will not require the Council to amend the Traffic and Parking Bylaw to refer to the special vehicle lanes on State highways. NZTA will make the necessary bylaws in due course and delegate the enforcement of the special vehicle lanes under the GRPA.
29. In September 2008, the Council obtained from the Commissioner of Police a number of warrants for Council parking officers. The warrants authorise the named persons to be enforcement officers with the right to exercise certain powers under the Land Transport Act 1998 solely in order to enforce the Christchurch City Council bylaws and the Land Transport (Road User) Rule 2004 relating to special vehicle lanes and in particular, bus lanes. These powers are exercisable only while the named persons are employed by the Christchurch City Council.
30. If the delegation from NZTA to the Council proceeds in terms of the special vehicle lanes, the Council will need to obtain, in due course, amended warrants from the Commissioner of Police that will authorise the named persons to be enforcement officers with the right to exercise certain powers under the Land Transport Act 1998 in order to enforce the NZTA bylaws and the Land Transport (Road User) Rule 2004 relating to special vehicle lanes and in particular, bus lanes on State highways.
31. Any agreement between the Council and NZTA will take into account the Council's obligations to comply with section 43 of the Transport Act 1962 and section 141 of the Land Transport Act 1998 in terms of the amounts of infringement fees remitted to the Crown. It should be noted that in terms of section 141(3A)(b) of the Land Transport Act 1998, it appears that the Council as an enforcement authority is entitled to retain all of these infringement fees.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

32. The enforcement of parking and special vehicle lanes aligns with the Regulatory Services Activity Management Plan and the Enforcement and Inspections Services provided by the Council, page 149, Our Community Plan 2006-2016.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

33. The recommendations of this report support a level of service associated with the Bus Priority Routes project of the Capital Works Programme, page 85, Our Community Plan 2006-2016.

ALIGNMENT WITH STRATEGIES

34. The enforcement of parking is currently undertaken in accordance with the Christchurch City Traffic and Parking Bylaw 2008. An amendment to the Traffic and Parking Bylaw to enable enforcement of special vehicle lanes is due to be presented to Council for approval in late March 2009.
35. The monitoring of parking offences is carried out in accordance with the CCC's Parking Strategy 2003.
36. The bus priority projects being implemented by both the CCC and NZTA are listed in the Regional Land Transport Strategy 2008-2018 and the Transport Regional Implementation Plan 2008-2038 (TRIP). TRIP lists seven further bus priority corridors to be investigated and developed by CCC and eight further bus priority corridors and intersections to be investigated and developed by NZTA.
37. The bus priority project is consistent with the National Land Transport Strategy, as well as key regional and local Council strategies, including the Regional Land Transport Strategy, Metropolitan Christchurch Transport Statement, Public Passenger Transport Strategy, Metro Strategy 2006-2012 and the Greater Christchurch Urban Development Strategy.

Do the recommendations align with the Council's strategies?

38. As above.

CONSULTATION FULFILMENT

39. Consultation on the bus priority projects has been undertaken by CCC and NZTA on their respective routes prior to approval from the respective authorities to proceed to implementation. Consultation did not specifically include discussion of which body would be enforcing the special vehicle lanes. This was considered to be an operational matter to be determined by the Council and NZTA in due course.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Accept a delegation from the New Zealand Transport Agency to undertake enforcement of parking and special vehicle lanes on State Highways.
- (b) Authorise the General Managers Regulation & Democracy Services and City Environment to sign an agreement with NZTA to give effect to:
- (i) Accepting the delegation, and
 - (ii) Clause 3(2) of the Council's Traffic & Parking Bylaw 2008.