

9. POLICY OF VEHICLE ENTRANCES AND FOOTPATH REVIEW

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PURPOSE OF REPORT

1. The purpose of this report is to report back on the Community Board views on the options for the policy of vehicle entrances and footpaths and to seek the Council's decision on the preferred way forward.

EXECUTIVE SUMMARY

2. The current Council's Policy "That the Council will maintain vehicle entrances on roads with an adjacent footpath" was adopted in 24 May 2001.

The reasons for the current policy are:

- (a) Vehicle crossings adjacent to footpaths are recognised as an integral part of the footpath system and thus registered as a footpath asset;
 - (b) Vehicle crossings where there is no footpath is directly attributable to the property owner rather than to the public good.
3. The Council's Traffic Bylaws 2008 Part 4 Vehicle crossing and Section 335 of Local Government 1974 Act requires owners of properties to form vehicle crossings.
 4. A previous review of the policy was carried out in 2004 and the Council at its meeting of 23 September 2004 resolved "that the current policy be confirmed". The reports of May 2001 and September 2004 are attached (**Attachment 1**).
 5. The issues relating to the maintenance and resurfacing of vehicle entrances not adjacent to footpaths was raised by Riccarton/Wigram and Fendalton/Waimari Community Boards in 2007. The key issue being "Where there is a footpath on only one side of the road the current level of service is to only resurface driveways on the footpath side of the road. The driveways on the opposite side of the road do not get resurfaced."
 6. The Council resolved at its 13 March 2008 meeting:

**15. REPORT OF THE RICCARTON/WIGRAM COMMUNITY BOARD:
MEETING OF 4 FEBRUARY 2008**

(1) Notice of Motion

It was resolved on the motion of the Mayor, seconded by Councillor Wells, that the Council undertake a review of the existing policy of vehicle entrances and footpaths.

7. Staff discussed the policy and alternative options with Community Boards in May – June 2009. Four boards favoured the status quo, six favoured the status quo for Hills and rural areas, two wished to make changes on the flat, and two favoured a change in the level of service throughout the whole area.

OPTIONS

8. The policy review considered three potential options:
 - (a) Status quo with the current policy reconfirmed.
 - (b) The status quo remains for the Hills and rural areas, with a change of level of service for the urban flat areas of the city.

- (c) Change in the level of service throughout the City Council Area.
9. These options were presented to each Community Board and the following issues were brought to elected members' attention with regard to each option.
10. Status quo with the Policy reconfirmed.
- (a) The Council is likely to receive an ongoing low level of complaints from property owners when footpath resurfacing works are undertaken on a particular road or street and their driveways are not included.
- (b) The budgets included in the 2009-19 LTCCP (Long Term Council Community Plan) support the status quo option.
11. Status quo remains for hills and rural areas, with a change in level of service for the urban flat areas of the city.
- (a) As part of the review external consultants MWH were commissioned to report on the cost implications of changing the level of service associated with the footpath re-surfacing program. In the review the footpath resurfacing programme 2008/09, excluding the rural area was used to estimate the additional funding required to resurface driveways on the opposite side to where there are no footpaths. An estimated capital cost of \$250,000 per annum was attributed to resurfacing of these vehicle crossings.
- (b) In the urban flat area of the city there are a number of property accesses across waterways supported by existing structures e.g. pipes, culverts, or bridges that will require some maintenance works or their replacements prior to resurfacing. It is estimated that \$50,000 per annum will be required to upgrade these structures prior to resurfacing works, this figure is an estimate only and could significantly increase once a detailed asset register has been compiled.
- (c) It is estimated that an increase in the maintenance operating budget of \$100,000 per annum will be required for repairing the crossings.
- (d) Work will be required to clearly define the level of service to be adopted on a street/road basis.
- (e) The option provides for differing level of service within the Council's area, some property owners are likely to complain that this is unfair.
12. Change in the level of service throughout the Council area.
- (a) A change in the level of service that includes resurfacing of all vehicle entrances on legal roads means there will be a need to increase the current Resurfacing budget. The current Resurfacing budget to resurface approximately 90 kilometres of footpath annually is \$4.45 million and it is estimated that this would need to be increased by \$400,000 per annum.
- (b) Across the City area there are property accesses supported by retaining structures on roads. It is estimated that \$150,000 per annum will be required to upgrade these structures prior to surfacing the accesses on road. Again this is a high-level estimate only and could significantly increase once the details of the assets are known.
- (c) For any change to the existing policy there will also be a need to review the current footpath operational repairs and maintenance budget of \$1.45 million per annum. Currently it is estimated that \$500,000 of the \$1.45 million is attributed to maintaining the vehicle crossings that formed the footpath network.
- (d) It is estimated that the maintenance budget needs to be increased by \$300,000 per annum.

- (e) Level of service is common across the Council's area.
13. Currently the stand alone vehicle entrances, i.e. without footpath adjacent to them, are not considered to be the Council's infrastructural assets to maintain and hence are not included in the Council's asset register. Any change of policy will require these "new" assets to be identified. Depreciation allowances for these assets will need to be included for changes to the current level of service.
 14. Any change of level service without any increase in funding will lead to a decreased level of service increasing the current footway resurfacing cycle from its existing 23 years cycle.
 15. If a change of policy was agreed there will be significant change to the management of this section of the Council's asset. The safe use of the entrances over waterways and supports to driveways would become the Council's responsibility. The management of these additional assets will be complex, in particular the responsibility of structural integrity of timber bridges across waterways, and 'dry rock' walls supporting driveways on legal roads.
 16. Any change of policy will potentially generate additional requests to maintain vehicle entrances from residents residing on roads that have no footpaths.
 17. In the consultant's review it included a survey of five other Councils' policies and the findings were:
 - (a) Waimakariri, North Shore and Wellington Councils have similar policies as Christchurch's existing policy.
 - (b) Napier has a policy to maintain driveways on legal roads for visual appearance.
 - (c) Auckland City Council is replacing asphaltic concrete footpaths with exposed aggregate concrete and will be replacing the old driveways to achieve uniformity.
 18. Any change of the present policy will require increases in both Operation and Capital Works budget for Footpath Resurfacing.

FINANCIAL IMPLICATIONS

19. Estimated summary of Additional Cost Implications:

	Annual (\$000K)			
	Footpath resurfacing Capital Maintenance budget.	Maintenance of structures, culverts, etc.	Footpath operational, repairs and maintenance.	Total
Option 1 Status Quo	\$0	\$0	\$0	\$0
Option 2 Status quo for Hills and rural areas, change in level of service for urban flat area	\$250	\$50	\$100	\$400
Option 3 Change in level of service throughout the Council area	\$400	\$150	\$300	\$850

20. There is currently no allowance in the 2009/19 LTCCP to change the policy on private driveway resurfacing.

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

21. The recommendations of the report could have an impact on the 2009/19 LTCCP budgets if the current policy is changed.

LEGAL CONSIDERATIONS

22. Sections 316, 317, and 319 of the Local Government Act 1974 confer a number of powers over roads on the Council. Specifically, section 316 (1) vests local roads in the Council, while section 317(1) provides that all roads in the district are under the control of the Council (excluding State Highways). Section 319 gives the Council power to do certain things in respect of roads (e.g. constructing and repairing roads etc). Section 319 (a) of the Local Government Act 1974 confers a power on the council *“to construct, upgrade and repair all roads with such materials and in such manner as the council thinks fit.”* The section only confers a power to construct, upgrade and repair any road, rather than an express duty to do so.
23. These sections need to be read in light of the common law. The Courts have held that proceedings cannot be brought against a local authority for failure to maintain and repair a road even though a statute gives the Council the power to repair it. This is known as the “non-feasance rule.” The rule is subject to a number of technical qualifications. But it has a long history in New Zealand and other jurisdictions. In the last few years the non-feasance rule has been the subject of criticism. It has now been rejected in Australia. In England, the rule has been abolished since 1961 and a positive repair obligation has been placed on highway authorities. However, in the opinion of the Legal Services Unit, the rule is still good law in New Zealand until a court says otherwise or the rule is changed by statute.
24. The opposite of the non-feasance rule is the misfeasance rule. Once the Council decides to reconstruct or repair a road, then it is obliged to exercise reasonable care in the performance of its self-imposed task.

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

25. Yes. The current policy that the Council will maintain vehicle entrances on roads with a footpath complies with the Local Government Act 1974 and is consistent with the non-feasance and misfeasance rules. The Council has a power to maintain and repair footpaths and vehicle entrance ways but it is not under a duty to do so. If the Council exercises its power to maintain footpaths and vehicle entrance ways it must do so with reasonable care and skill.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

26. This review is to consider a potential change to the level of service.

Do the recommendations align with the Council’s strategies?

27. Not applicable.

CONSULTATION FULFILMENT

28. These options have been discussed with all Community Boards.

COMMUNITY BOARD RECOMMENDATIONS

Riccarton/Wigram

That the Council:

- (a) Adopt **Option 2** and that these additional works be included by way of an adjustment to the annual work programme each year.
- (b) Approve that where street footpaths on one side of the road have been resealed in the past six years, the footpath crossings on the other side of the road be included in the forward work programme.

Lyttelton/Mt Herbert

It is recommended that the status quo with the current policy be retained.

Fendalton/Waimari

It is recommended:

- (a) That **Option 2** identified in the report be adopted, which states that the status quo for hills and rural areas remain but that a change in level of service for urban flat areas be introduced.
- (b) That staff be requested to explore all the potential issues surrounding new residential developments and subdivision where footpaths are proposed for only one side of a street.
- (c) That staff be requested to make information readily available to owners of properties that are affected by the Council's policy regarding vehicle entrance and footpaths.

Shirley/Papanui

It is recommended:

- (a) That **Option 3** be adopted which implies the change in the level of service throughout the Council area.
- (b) That the Council identify the preferred long term policy and request staff to undertake detailed analysis of the preferred option so that it can be adopted for the 2012-22 LTCCP.

Hagley/Ferrymead

It is recommended:

- (a) That the Council identify the preferred long term policy and request staff to undertake detailed analysis of the preferred option so that it can be adopted as a change to the 2009-19 LTCCP as part of the next annual plan process.

Spreydon/Heathcote

It is recommended that the Council:

- (a) Confirm the status quo by retaining the Council policy.
- (b) Request staff to supply information regarding Council policy on footpaths and accessways in LIM reports.

Burwood/Pegasus

It is recommended:

- (a) That the status quo with the current policy be retained.

Akaroa/Wairewa

It is recommended:

- (a) That the status quo with the current policy be retained.

SUMMARY OF BOARD RECOMMENDATIONS

Status Quo Remains	Status Quo Remains for Hills and Rural Areas with a Change in Service for the Flat City Areas	Change in Level of Service for the Council Area, implemented 2012/22	Change in level of Service for the Council Area, implemented 2009/19 LTCCP
Lyttelton / Mt Herbert Spreydon / Heathcote Burwood / Pegasus Akaroa / Wairewa	Riccarton / Wigram Fendalton / Waimari	Shirley / Papanui	Hagley / Ferrymead

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Reconfirm the existing Policy relating to the surface of vehicle entrances.
- (b) When a reseal project is programmed, give owners of properties the opportunity to have their vehicle crossing resealed as part of the Council contract but at the owner's cost.
- (c) Note that the Council will only undertake these reseals using its standard seal materials.

BACKGROUND

29. The Local Government Act and Council's Transport Bylaws 2008 require property owners to provide vehicle crossings across any footpath on any road or water channel on or adjoining any road by means of a crossing properly constructed. Vehicle crossing also includes crossings to all private rights of ways or private roads.
30. The responsibility of maintaining vehicle entrances on legal roads has always been a contentious issue and it is for these reasons that the Council adopted the current policy at its meeting on 25 May 2001.

The Policy states

"That Council will maintain vehicle entrances on roads with an adjacent footpath".

The reasons for the policy:

- (a) Vehicle crossings adjacent to footpaths are recognised as an integral part of the footpath.
 - (b) Vehicle crossings, where there is no footpath is directly attributable to the property owner rather than to the public good.
31. This policy was reconfirmed by the Council in 2004 (23 September 2004 report is **Attachment 1**).
 32. The provision of one only footpath within the road corridor is a Subdivision rule in the City Plan for Subdivisional roads. The criteria being that the road is:
 - (a) Carrying less than 250 vehicles per day i.e. serving 25 dwelling units
 - (b) In Living Hills Zone.

This practice and rule has been in place since the mid 1970s.

33. The Council discussed all options at a workshop on 9 June 2010 and raised the question of whether property owners could be given the opportunity to have their vehicle crossing resurfaced as part of a Council reseal project, on the understanding that the costs are met by the property owner.

This is covered in the staff recommendation (b).