

Road Stopping Policy

January 2023

Road Stopping Policy

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Table of Contents



1.	Introduction.....	2
2.	Purpose	2
3.	Policy Scope.....	2
4.	Policy Statement.....	3
	Evaluation Criteria	3
	Circumstances when a road stopping application will not proceed.....	4
	Statutory process for road stopping.....	5
	Local Government Act 1974 process.....	5
	Public Works Act 1981 process	5
	Applying to stop a road	6
5.	Definitions	9
6.	References and related documents	9

1. Introduction

2

- 1.1. Road Stopping is the legal process to change the status of road to fee simple land. Once a road is legally stopped the land can be retained, sold or transferred for an alternative use. The road stopping process is governed by either the Local Government Act 1974 or the Public Works Act 1981. The statutory process used in relation to a particular application is governed by this Policy.
- 1.2. The stopping of a road, may be initiated by a Council business unit to meet Council policies or strategies, or may be because of a road stopping application received from a third party. The applicant is required under this Policy to meet all the Council's costs including legal, survey, valuation, and staff costs, and to pay the current market value for the land.
- 1.3. Where the application is from a third party and the land is sold, a road stopping results in the privatisation of a public asset/benefit.

2. Purpose

- 2.1 This Policy provides guidance on the Council's approach to:
 - a. Road stopping applications generally.
 - b. Identifying which statutory road stopping process will be used.
 - c. The evaluation criteria to be applied when considering road stopping applications.
 - d. Achieving consistency with road stopping applications, decisions and processes.
 - e. Ensuring statutory compliance.

3. Policy Scope

- 3.1. This policy applies to both formed and unformed (paper) legal road.
- 3.2. Road stopping is a separate and unrelated process to road "closures". Road closures are temporary and generally used to facilitate road works, construction works or events. Information on how to apply for a temporary road closure can be found on the Council's website.
- 3.3. Rural Roads - section 342 (1) of the Local Government Act 1974 provides that the Council cannot "proceed to stop any road or part thereof in a rural area unless the prior consent of the Minister of Lands has been obtained".

4. Policy Statement



Evaluation Criteria

- 4.1. When an application for road stopping is received the Council will evaluate if the application should proceed or not (including an assessment of the transport, environmental, legal and planning circumstances, the presence of utilities and other relevant factors).
- 4.2. The considerations which govern this decision are outlined below:

Land Status	Is the land legally held by the Council as road?
District Plan	Would there be there any adverse impacts from the proposed road stopping on adjoining properties under the District Plan, e.g. setback, site coverage, neighbourhood, amenity, etc.?
Current Level of Use	<p>Is the road the sole or most convenient means of access to any existing lots, public space, community facilities, or amenity features such as a river, coast, park, etc.?</p> <p>Is the road used by the public, including vehicles, cycles and/or pedestrians?</p> <p>Is the road corridor an essential component of the resilience/evacuation network or the over-dimensioned vehicle network, or any other relevant network?</p>
Future Use	<p>Will the road be needed to serve future residential, commercial, industrial and agricultural developments?</p> <p>Will the road be needed for a future connection in the existing network?</p> <p>Will the road be required to provide an inter-district link?</p>
Alternative Uses	<p>Can the road be utilised by the Council for other public works either now or in the future?</p> <p>Does the road have current or potential value for either amenity or conservation functions e.g. walkway, footpath, cycle path, utilities, esplanade strip, protection of vegetation or trees, etc.?</p>



Road adjoining a water body	Is the land required to be vested in the Council as an esplanade reserve after road stopping is completed (Local Government Act 1974 s345(3))?
Utilities	<p>Does the road include any services or infrastructure, e.g. pipes, conduits or cables?</p> <p>Can the services or infrastructure be adequately protected by easement? (i.e. there will be cases when an easement is not suitable, e.g. major underground infrastructure, water supply, etc.).</p>
Traffic Safety	<p>Does the access and egress of motor vehicles on the section of road proposed for road stopping constitute a danger or hazard to other road users?</p> <p>Would the road stopping have a negative impact on road safety?</p>

Circumstances when a road stopping application will not proceed

4.3 An application for road stopping will not proceed if the Council (in its sole discretion) determines that:

- the road has been identified as providing a future road corridor; or
- the road has the potential to provide a future or alternative inter-district link; or
- the road is required, or may be required at any time in the future, for any roading or associated purpose (including any possible future need for movement corridors, for example walkways, cycle ways or other uses additional to normal vehicular needs); or
- the road is required, or may be required at any time in the future, for any public work, movement corridor or associated purpose by the Council or any other agency; or
- the road is required as a designated evacuation route and/or an over dimension vehicle route; or
- the stopping of the road will result in any land becoming landlocked; or
- the road provides primary access from a public road or reserve to a watercourse, water body, coastal marine area, unless there are sound management, ecological or environmental reasons for doing otherwise; or
- the road provides primary access to an esplanade reserve, reserve or park, unless there are sound management or ecological reasons for doing otherwise; or
- the stopping of the road would conflict with mana whenua values as outlined in the District Plan; or
- the stopping of the road will adversely affect the viability of any commercial activity or operation; or
- objections are received from any electricity or telecommunications service provider and those objections are not able to be resolved by agreement between the Council and that provider; or

- any infrastructure or utilities situated on the road would be better protected and managed through continued Council ownership e.g. water supply, public transport infrastructure; or
 - the road stopping could injuriously affect or have a negative or adverse impact on any other property; or
 - the road stopping could have an impact on a public work to be undertaken by any other agency including the Crown; or
 - that the road has significant landscape or streetscape amenity; or
 - any other circumstances apply that would suggest that the road stopping should not proceed; or
- 4.4 Notwithstanding anything in this Policy, the provisions of section 80 of the Local Government Act 2002, which allows the Council to depart from Council policy in certain circumstances.

Statutory process for road stopping

- 4.5 The following criteria have been established to ensure that the appropriate statutory procedure is consistently adopted by the Council, and to avoid, as much as is practicable, such decisions being successfully contested by any party.

Local Government Act 1974 process

- 4.6 The Local Government Act 1974 road-stopping procedure will be adopted if one or more of the following circumstances apply:
- a. Where any public right of access to any public space could be removed or materially limited or extinguished because of the road being stopped; or
 - b. If it is found through the review process that the road stopping could injuriously affect or have a negative or adverse impact on any other property; or
 - c. The road stopping is, in the judgment of the Council, likely to be controversial; or
 - d. If there is any doubt or uncertainty as to which procedure should be used to stop the road; or
 - e. The Public Works Act 1981 process is not able to be used or is not used.

Public Works Act 1981 process

- 4.7 The Public Works Act 1981 road stopping procedure may be adopted only if all the following circumstances apply:
- a. Where there are no more than two properties, other than the applicant's property, adjoining the road proposed to be stopped.
 - b. Where the written consent to the proposed road stopping of all adjoining landowners (other than the applicant) to the proposed road-stopping is obtained.
 - c. Where no other persons, including the public generally, are considered by the Council in its judgment to be adversely affected by the proposed road stopping.
 - d. Where the road proposed to be stopped is to be amalgamated with the adjoining property or properties (as appropriate); and
 - e. Where other reasonable access exists or will be provided to replace the access previously provided by the road proposed to be stopped (i.e. by the construction of a new road); and

- f. Where the use of the Public Works Act 1981 road stopping procedure is approved by the relevant Government department or Minister.

4.8 If any one of the circumstances referred to in clause 4.7 does not apply, then the Local Government Act 1974 process must be used.

Applying to stop a road

4.9 An application must be received by the Council on the Council's prescribed application form together with the application fee (non-refundable). An application cannot be considered or processed until the completed prescribed application form and the application fee (if any) are received.

4.10 The Council's prescribed application form and the Schedule of Fees and Charges are available on the Council's website. The Council's fees and charges are reviewed on an annual basis.

Additional costs

4.11 Additional costs and expenses that an applicant will be liable to meet should a road stopping application proceed include (but are not limited to):

Survey Costs

Includes identification and investigations of the site and professional fees associated with the compilation of a survey office plan.

Consenting

Any costs associated with obtaining the consent to the proposal, including, but not limited to, the Minister of Lands.

Public Advertising

The cost of public notification required under the Local Government Act 1974.

Accredited Agent Fees

Includes professional and other fees incurred because of any gazettal actions required.

Land Information New Zealand (LINZ)

Fees Includes lodgement fees associated with survey office plan approval, registration of gazette notice, easement instrument or any other dealing, and raising of new record(s) of title.

Legal Fees

The applicant will be responsible to meet their own legal costs, as well as those incurred by the Council (including internal legal staff costs) including, but not limited to, the preparation of an Agreement for Sale and Purchase and the settlement of the transaction.

Valuation Costs

The costs to obtain an independent registered valuation of the road proposed to be stopped. If the applicant queries the valuation, they will also be responsible for any additional costs incurred.

Cost of Court and Hearing Proceedings

Pursuant to the Tenth Schedule of the Local Government Act 1974, if any objections are received to a road stopping application, and the application is referred to the Environment Court for a decision, then the applicant shall meet all the Council's legal and other costs associated with the conduct of the legal proceedings in that Court.

Staff and/or Consultants Time

Staff time to be calculated on a time and attendance basis according to applicable individual staff hourly charge-out rates. Consultants time will be charged at the cost charged to Council and their use will be at the sole discretion of Council and maybe used when staff are not available to process stoppings but are not limited to this use.

Market Value of the Road

Consideration must be given to offering back the land to either the previous owner from whom it was acquired or manu whenua, who may have a prior claim on the land under Te Tiriti, once the road designation is lifted.

Note: These two mechanisms address two different issues – offer back relates to the impact on individual former owners, while the return of land through Treaty claim settlements addresses a claimant group’s historical claims. However, both mechanisms recognise the impact the Crown’s actions have had on either private landowners or Māori. Both processes require Crown agencies (including local government) to address historical investigation, surveying and titling issues before the land can pass out of Crown ownership. These actions can delay disposal of land and increase costs.

The applicant must pay the Current Market Value of the road proposed to be stopped as determined by a registered valuer appointed by the Council, or if the land is to be leased a rent as determined by a registered valuer appointed by the Council.

- 4.12 If there is an element of public benefit to the proposed road stopping the Council may agree that the costs be shared between the applicant and the Council in such proportions as the Council determines (in its discretion).

Discontinuing the Road Stopping Process

4.13 Until the Council and the applicant enter into a Sale and Purchase Agreement in respect of the underlying land:

- i. the Council reserves the right either to discontinue or exercise its discretion not to proceed with the road stopping application process.
- ii. the applicant may also discontinue the road-stopping process, providing they pay to the Council the costs incurred to date that are required to be paid under this Policy.

4.14 After that time, if the Council and the applicant enter into a Sale and Purchase Agreement their relationship and obligations shall be governed by the terms and conditions of that agreement.

Agreement for Sale and Purchase

4.15 When a road stopping application by a third party has been accepted by the Council, an Agreement for Sale and Purchase must be entered into between the applicant and the Council.

4.16 The Agreement for Sale and Purchase may include terms and conditions including, but not limited to:

- The road stopping may not commence until the Agreement for Sale and Purchase is signed by both parties.
- All the Council’s costs accrued at this stage shall be paid by the applicant prior to the road stopping commencing.
- Any requirement for a deposit to be paid sufficient to cover the Council’s estimate of all the Council’s costs associated with the road stopping application. If the road-stopping is discontinued for any reason then the deposit shall be refundable to the applicant less the



actual costs incurred by the Council in processing the application to that point in time, as determined by the Council.

- The agreement being subject to obtaining the approval of the Minister of Lands, if required.
- Any other terms and conditions the Council considers are appropriate.

4.17 When the road stopping process used is the Local Government Act 1974 procedure, the Agreement for Sale and Purchase will provide as appropriate that:

- a. if any objection is received and is allowed by the Council, the Agreement will be automatically deemed to be cancelled and the deposit paid (if any) refunded to the applicant less any costs incurred by the Council to that date; and
- b. if any objection is received and is not allowed by Council, and the objector wishes the matter to be referred to the Environment Court, the applicant may at that point elect to cancel the Agreement provided that all costs incurred in relation to the application by the council to that date shall be deducted from the deposit; or
- c. if the applicant does not elect to cancel the Agreement in the circumstances described in paragraph b. and the objection is referred to the Environment Court for determination. The applicant shall pay on demand to the Council all costs incurred by the Council in referring the matter to the Environment Court and in relation to the hearing by that Court.

4.18 If the Agreement is cancelled for any reason the applicant will meet all costs incurred by the Council.

5. Definitions

For the purposes of this Policy, the following meanings apply:

- a) "Council" means the Mackenzie District Council.
- b) "Current Market Value" means the value attributable to the highest and best use of the land including consideration of the value that the stopped road adds to the adjoining land with which it is to be amalgamated.
- c) Road means any part of a road (as defined in section 315 of the Local Government Act 1974) (including any unformed road) which is the subject of a road stopping application to the Council.

6. References and related documents

Document	Link
Local Government Act 1974 s.342 & schedule 10	https://www.legislation.govt.nz/act/public/1974/0066/latest/DLM420607.html
Public Works Act 1981 s.116	http://www.legislation.govt.nz/act/public/1981/0035/latest/DLM45427.html?src=qs (external link)



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