

4. ROAD STOPPING POLICY



General Manager responsible:	General Managers City Environment and Corporate Services DDI: 941 8608 and 941 8528
Officer responsible:	Manager Property Consultancy
Author:	Angus Smith, Manager Property Consultancy

PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Council the adoption of a formal policy in relation to the stopping of legal road.

EXECUTIVE SUMMARY

2. The Council at its meeting on 14 August 2008 passed the following resolution in response to a report concerning a proposed stopping of legal road adjacent to the property at 10 Waiwetu Street:

"It was resolved that the Council leave this matter to lie on the table at Council until the Council has resolved its policy position on these matters, as highlighted by the report on the disposal of surplus road land outside 173 Clyde Road, which was deferred by the Council at its meeting on 12 June 2008."

3. A report recommending the adoption of policy and delegations for road stopping was subsequently considered by Council on 25 September 2008 which resulted in the following resolution:

"It was resolved on the motion of Councillor Wall, seconded by Councillor Buck, that this report be forwarded to Community Boards for their comment and a subsequent amended report to be brought back to the Council."

4. This report, amended from the original to incorporate comments/issues arising from the Council debate, seeks to attend to this resolution.
5. Every year the Council stops a number of roads, or parts of road(s), either to meet Council policies or strategies, or in direct response to a road stopping application by a third party. Most of these are straight-forward applications involving small non-complying land parcels held by the Council along the road frontage of properties no longer required for roading purposes. The decisions taken on these straight-forward applications are generally governed by infrastructure needs at an asset planning and management level. Accordingly, allowing these minor decisions to be undertaken at a management level, rather than at a governance level, would enable such applications to be processed more quickly, more efficiently and with less cost and would have remove unnecessary administrative issues from the Council's meeting agenda. However, some road stopping applications are more strategic in nature and involve significant parcels of land that should be considered by elected members.
6. At the moment individual road stopping decisions are made in isolation without reference to a policy document or statement of Council objectives. Accordingly staff have prepared a draft 'Road Stopping Policy' for consideration by the Council.
7. In summary, this report proposes:

(a) That the Council:

- (i) Approves and adopts the **attached** Road Stopping Policy
- (ii) Approves the delegations set out in the staff recommendations to this report that delegate the decision making for minor road stopping decisions to Council staff and the delegation for all other road stopping decisions to Community Boards.

- (b) That Community Boards may approve or decline any road-stopping applications received in relation to any legal road situated in their Wards where such decision making is consistent with the Council's Road Stopping Policy and is not subject to a staff delegation.
- (c) That the Corporate Support Manager under delegated authority may:
- (i) Approve or decline road-stopping applications only where:
- The area of road to be stopped is not a complying lot under the City Plan on its own; and
 - It will be necessary for the stopped road to be amalgamated with the title to the adjoining property; and
 - The adjoining owner is the logical purchaser of the stopped road; and
 - The proposed road-stopping complies with the Council's Road Stopping Policy.
- (ii) Where his delegated authority applies, determine which statutory road-stopping process is to be used and implement the necessary statutory and other procedures required to effect the road stopping in accordance with the Road Stopping Policy.

8. The Council has the legal ability to stop roads either under the Local Government Act 1974 (LGA), or the Public Works Act 1981 (PWA). The major difference between the two procedures is that under the LGA process there is a requirement for public notification and the ability of members of the public to object, whereas, with the consent of all adjoining land owners, there is no such general consultation requirement and objection process under the PWA.
9. Currently the Christchurch City Council does not have a Road Stopping Policy. The development of such a policy will ensure that the Council's decision-making and application processes are clear and consistent. Consistency is required in terms of determining under which Act a road will be stopped, as well as the assessment and evaluation criteria to be utilised.
10. The recommended Policy has been developed by the Property Consultancy Team in consultation with the Asset and Network Planning Unit, the Legal Services Unit and the Survey Team.

FINANCIAL IMPLICATIONS

11. The Policy is based on the principle of full cost recovery from third party applicants and recommendations will be made through the Annual Plan and LTCCP processes to support this. It is proposed that purchasers of land will reimburse the Council for the costs (including Council staff time) and disbursements incurred by the Council to complete the transaction.

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

12. Yes.

LEGAL CONSIDERATIONS

13. Under the Local Government Act 2002 the Council is permitted to adopt a policy to provide guidelines as to the criteria and process to be adopted by the Council when considering and implementing any decision to stop any legal road.
14. The Council has the ability to stop road, or parts of a road, either by using the process under the PWA or the process under the LGA. The procedures that are required to be followed by the Council when using the LGA process are set out in the Tenth Schedule to the LGA, and include the public notification of the proposed road stopping and for the hearing of any objections received. Conversely, the PWA process does not require public notification. However, the Council and any adjoining landowner(s) must consent to the proposal.

15. The relevant sections of each Act are summarised below.

Local Government Act 1974

Section 319 (h) – General powers of councils in respect of roads-

This Section gives local authorities the general power to stop any road or part thereof in accordance with the Act.

Section 342 (1) (a) – Stopping of roads-

Confers on the Council the ability to declare a road to be formally stopped.

Section 345 – Disposal of land not required for road-

In relation to stopped road that is no longer required by the local authority, this Section provides that the Council may sell or lease that part of the stopped road to the owner(s) of any adjoining land.

This Section goes on further to provide that the price or rent for the stopped road is to be fixed by a competent valuer appointed by the Council. If the owner(s) is not prepared to pay the fixed price or rent, the Council may sell the land by public auction or private tender.

Section 345 (2) – Amalgamation of stopped road with adjoining land-

This Section enables the Council to require the amalgamation of stopped road with adjoining land if deemed appropriate.

Section 345 (3) – Stopped road to vest as Esplanade Reserve

Where any road along the mark of a mean high water springs of the sea, or along the bank of any river within an average width of 3 meters or more, or the margin of any lake with an area of 8 hectares or more is stopped, this Section requires an area of road to vest in the Council as an esplanade reserve for the purposes specified in Section 229 of the Resource Management Act 1991.

Tenth Schedule – Conditions as to Stopping of Roads

Outlines the procedure to be undertaken in order to stop a road. The following table summarises the various steps:

1.	The Council prepares: (a) a survey plan of the road proposed to be stopped; and (b) an explanation as to why the road is to be stopped and the purpose or purposes to which the stopped road will be put. And lodges the plan at LINZ for approval.
2.	Once LINZ has approved the plan, the plan is made available to the public with a view to receiving objections to the proposal(s). The Council must: (a) at least twice, at intervals of not less than 7 days, give public notice of the proposal(s); (b) serve the same notice on the occupiers of all land adjoining the road; The Plan is open for public objection for a minimum period of 40 days from the date of the first publication of the public notice.
3.	A notice of the proposed stopping is fixed in a conspicuous place at each end of the road proposed to be stopped for the duration of the public notification period.
4.	If no objections are received, the Council may by public notice declare that the road is stopped.
5.	If objections are received, the Council shall, unless it decides to allow the objections, send the objections together with the plans and a full description of the proposed alterations to the Environment Court.

6.	The Environment Court will make a final and conclusive decision.
7.	If the Environment Court reverses the decision of the Council, no proceedings shall be entered by the Court for stopping the road for 2 years thereafter.
8.	If the Environment Court confirms the decision of the Council, the Council may declare by public notice that the road is stopped.
9.	The notice and survey plan will be lodged with LINZ for record.

Public Works Act 1981

Section 116 – Stopping Roads-

This Section provides that, subject to the consent of the territorial authority and the owner(s) of the land adjoining the road in writing to the stopping, then the road can be declared formally stopped by notice in the Gazette.

Section 117 – Dealing with stopped roads-

This Section enables the Council to deal with the stopped road in the same manner as if the road had been stopped pursuant to the Local Government Act 1974.

Section 118 – Application of other Acts to stopped roads-

Where any road or any portion of a road along the mark of a mean high water springs of the sea, or along the bank of any river, or the margin of any lake (as the case may be) is stopped under Section 116 of this Act, then Section 345(3) of the Local Government Act 1974 (relating to esplanade reserves) shall apply to the stopped road.

Section 120 – Registration-

This Section provides for the road stopping to be noted by the District Land Registrar and if deemed appropriate by the Council for it to be amalgamated with the adjoining land.

The road stopping procedure pursuant to this Act is summarised in the table below:

1.	The owners of any land adjoining the road to be stopped must consent in writing to the stopping.
2.	The Council must consent to the road stopping proposal.
3.	The Council prepares a survey plan of the road proposed to be stopped and lodges the plan at LINZ for approval.
4.	The land is declared stopped by proclamation and publication of that proclamation in the New Zealand Gazette. A copy of the entry in the Gazette is then registered at LINZ.

Determining which statutory process to follow

- Neither the LGA nor the PWA gives specific guidance as to which statutory procedure should be used. Currently, Council staff make this assessment on a case by case basis having due regard to the effect of the road-stopping on the public and parties other than the applicant and the likelihood of the proposal succeeding. Council staff have operated on the basis that best practice has dictated that if in doubt, the LGA procedure should apply. Guidelines about which Act to follow are set out in the proposed Road Stopping Policy document below.

DELEGATIONS

- Pursuant to paragraph 32 of the 7th Schedule of the Local Government Act 2002 the Council has the legal ability to delegate its road-stopping powers under both the LGA and the PWA.

18. Currently, the only road-stopping power that the Council has delegated is a delegation to Community Boards to stop "access ways". Section 315(1) of the Local Government Act 1974 defines "access-way" as:

"any passage way, laid out or constructed by the authority of the council or the Minister of Works and Development [or, on or after the 1st day of April 1988, the Minister of Lands] for the purposes of providing the public with a convenient route for pedestrians from any road, service lane, or reserve to another, or to any public place or to any railway station, or from one public place to another public place, or from one part of any road, service lane, or reserve to another part of that same road, service lane, or reserve".

It is proposed not to alter this delegation.

The Council has delegated the power to hear objections to road stopping procedures pursuant to the Tenth Schedule of the Local Government Act 1974 to Council Hearings Panels. It is not proposed to alter this.

19. The Council has not delegated any other part of its road-stopping powers. The practical effect of this is that all road-stopping applications, whether from Council staff, implementing Council agreed policies and strategies, or from third parties, require a formal Council resolution.
20. When the Council initially considered this report on 25 September 2008, Councillors raised concerns in the debate about unformed legal (paper) roads (particularly in relation to Banks Peninsula) and issues around scale and size of road-stoppings. With respect to Banks Peninsula, the retention of appropriate legal but unformed roads will be considered and evaluated as part of the development of the open space strategy being prepared by Strategy and Planning. The intention being to provide and retain appropriate access to reserves, bays and foreshores and to provide linkages and connections throughout the Peninsula. Before any action was taken to stop a road these matters would first have to be considered before any decision to proceed was recommended.
21. The Council may delegate authority to proceed with a road stopping application to either Council staff or to community boards. In addressing these two issues, whilst endeavouring to maintain the necessary balance to enable the delivery of an efficient and effective service, the following is proposed:
- (a) Staff are delegated the authority to process and make decisions, in accordance with the **attached** policy, on applications relating to non complying lots / strips of land adjacent to properties which are required to be amalgamated into the adjoining neighbouring title.
 - (b) That decisions on applications for complying lots in their own right and the stopping of unformed legal (paper) roads or other significant parcels be delegated to the relevant community board.
22. There are compelling reasons why the Council may consider delegating to Council staff the power to deal with minor road-stopping applications, as follows:
- On the adoption of a formal Road Stopping Policy, the Council will have established, in its governance role, the rules or guidelines to be implemented when road stopping decisions are considered. It would therefore be logical that the 'management' decision of implementing the policy be delegated to staff
 - In financial terms road-stopping issues are often relatively insignificant.
 - There are generally no associated significant strategic issues.
 - Consistency in decision-making across the city.
 - Both the LGA and the PWA provide for consultation according to the statutory process used.

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

23. Yes, see above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

24. Not applicable.

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

25. Not applicable.

ALIGNMENT WITH STRATEGIES

26. Not applicable.

Do the recommendations align with the Council's strategies?

27. Not applicable.

CONSULTATION FULFILMENT

28. There is no mandatory obligation on the Council to consult before it makes a decision on the proposed Road Stopping Policy.

29. The proposal is not significant in terms of the Council's Significance Policy.

30. The Policy is intended to establish a transparent and consistent platform on which future decisions can be based. This is for the benefit of both Council staff and people who intend entering into negotiations for the purchase of land previously vested in the Council as legal road. It is expected that they will prefer this approach to the ad hoc manner in which road-stopping has been undertaken to date. It is also fair that prospective purchasers meet the Council's reasonable costs (including Council staff time) of carrying out the process required to enable transactions to be concluded.

31. This report has been presented at each Community Board for a formal recommendation to the Council. Recommendations made by individual boards have been compiled by staff into this report.

STAFF RECOMMENDATION TO THE COMMUNITY BOARDS

It is recommended that the Council resolves:

(a) That the Council adopts the 'Christchurch City Council Road Stopping Policy' in the form attached to this report.

(b) That the Council's power to accept or decline an application from either a Council business unit or from any other person to stop legal road be delegated to the Corporate Support Unit Manager **provided that** such application shall meet the following criteria:

- The area of road to be stopped will not constitute a complying lot under the City Plan on its own account; and
- It will be necessary for the stopped road to be amalgamated with the certificate of title to the adjoining property; and
- The owner of the adjoining property is the logical purchaser of the stopped road; and
- That the proposed road-stopping complies with the Council's Road Stopping Policy.

- (c) That where the Corporate Support Manager's delegated authority under paragraph (b) of this resolution shall apply:
- (i) That the Council's powers under sections 116, 117 and 120 of the Public Works Act 1981 and Sections 319(h), 342(1)(a) and 345 of the Local Government Act 1974 (excluding the power to hear objections and recommend to the Council whether the Council should allow or otherwise any objections received to road stopping procedures pursuant to the Tenth Schedule of the Local Government Act 1974 and the Council's powers under paragraph 5 of the Tenth Schedule) in relation to road stopping and the disposal of land that was previously stopped road be delegated to the Corporate Support Unit Manager.
 - (ii) That the power to determine (in compliance with the Council's Road Stopping Policy) which statutory procedure should be employed to undertake a particular road stopping (either under the Local Government Act 1974 or under the Public Works Act 1981) be delegated to the Corporate Support Unit Manager.
- (d) That the Council's power to accept or decline an application from either by a Council business unit or from any other person to stop legal road which does not fall within the delegation given to the Corporate Support Unit Manager under paragraph (b) of this resolution shall be delegated to the Community Board for the Ward within which the legal road proposed to be stopped is situated.
- (e) That where the Community Board's delegated authority under paragraph (d) of this resolution shall apply:
- (i) That the Council's powers under sections 116, 117 and 120 of the Public Works Act 1981 and Sections 319(h), 342(1)(a) and 345 of the Local Government Act 1974 (excluding the power to hear objections and recommend to the Council whether the Council should allow or otherwise any objections received to road stopping procedures pursuant to the Tenth Schedule of the Local Government Act 1974 and the Council's powers under paragraph 5 of the Tenth Schedule) in relation to road stopping and the disposal of land that was previously stopped road be delegated to the Community Board for the Ward within which the proposed legal road is situated and to be exercised in accordance with the Council's Road Stopping Policy..
 - (ii) That the power to determine (in compliance with the Council's Road Stopping Policy) which statutory procedure should be employed to undertake a particular road stopping (either under the Local Government Act 1974 or under the Public Works Act 1981) be delegated to the Community Board for the Ward within which the proposed legal road is situated and to be exercised in accordance with the Council's Road Stopping Policy.

BOARD RECOMMENDATIONS

RICCARTON WIGRAM

The Board wish to be notified of any proposed road stopping before the officer's delegated decision is exercised

Staff Comment: Staff agree to adopt a process that where applications proposed to be dealt by staff under delegated authority be circulated informally to board members for comment (similar to the liquor licensing application process) prior to the application being processed.

AKAROA/WAIREWA

The Board decided to adopt the staff recommendations relating to the Road Stopping Policy, subject to the following points:

Interpretation Clause 3 (b) – add which is and including unformed paper roads. To read: "road" means that part of a legal road which is the subject of a road stopping application to the Council, including unformed paper roads.

Staff Comment: Agreed. Draft Policy adjusted accordingly.

Interpretation – include a definition of “adjoining property”

Staff Comment: The concept of “adjoining property” is one used in the wording of the recommended delegations, not in the draft Policy itself. Accordingly, the usual dictionary definition of “adjoining” (which means “to be next to and joined with”) would apply.

Evaluation Criteria Clause 4 (Flow Chart) – include a rule to require consultation with the appropriate Community Board if the road is a rural one on Banks Peninsula.

Staff Comment: In the event that the application should fall within the staff delegation and not within the Board delegation, then staff agree to adopt a process that such applications be circulated informally to board members for comment (similar to the liquor licensing application process) prior to the application being processed.

Evaluation Criteria Clause 5 – delete it and insert in. To read:
An application for road stopping will not proceed if the Council shall it in its discretion

Staff Comment: Agreed. Draft Policy adjusted accordingly.

Evaluation Criteria Clauses 5(c) and 5(d) – include the words movement corridors as a generic term for other road uses. To read:

- (c) the road is required, or may be required at any time in the future, for any roading, movement corridor or associated purpose.
- (d) the road is required, or may be required at any time in the future, for any public work, movement corridor or associated purpose.

Staff Comment: Agreed. Draft Policy adjusted accordingly.

Clause 10 (b) – expand on the meaning of “all landowners affected”.

Staff Comment: Staff propose to replace the word “affected” with the word “adjoining” to accord with the Public Works Act 1981.

LYTTELTON/MT HERBERT

The Board considered a report which requested its comments regarding the adoption of a formal policy in relation to the stopping of legal road, the Christchurch City Council Road Stopping Policy 2009

The Board **decided** to adopt the staff recommendation. The Board’s recommendation will form part of a report to Council, together with recommendations from the other community boards.

Additional Comments

Nil

SHIRLEY/PAPANUI

The Board considered a report seeking recommendation to the Council to adopt a formal policy in relation to the stopping of legal road. Staff advised comments and recommendations from each of the eight Community Boards would be reported back to the Council in a combined report.

The Board **agreed** to temporarily suspend Standing Order 2.1.3 for the purpose of allowing Board members to discuss and clarify information provided in the report.

The Board **agreed** to lift the temporary suspension of Standing Order 2.1.3.

The Board **agreed** that before making a recommendation to the Council:

- (a) That consideration of the Road Stopping Policy report be deferred to enable staff to provide definitions of “minor” and “contentious” issues.
- (b) That the Road Stopping Policy needs to define the role of Community Boards in relation to the implementation of this policy.

Staff Comment: Subsequent to the formal Board meeting staff attended a Board Workshop on 25 March 2009 to provide the additional information sought by the Board. The result of those discussions was that the Board agreed, albeit informally, to adopt the staff recommendations.

BURWOOD/PEGASUS

The Board **decided** to support the staff recommendations subject to the addition of further wording to recommendation (b) by way of a new bullet point as follows:

- The area of road to be stopped is not adjacent to a reserve or waterway.

Staff Comment: Agreed. Draft staff recommendation adjusted accordingly - See Post Board Consultation Staff Recommendation below.

SPREYDON/HEATHCOTE

The Board considered a report on the proposed Road Stopping Policy. A report with recommendations from all eight Community Boards will be submitted to a later Council meeting in 2009.

The Board requested that feedback be provided to Council on the following matters:

- (i) The Board seeks the inclusion of the following as a criteria for non-approval, that the land has a landscape amenity value. (section 5).

Staff Comment: Agreed. Draft Policy adjusted accordingly (See paragraph 5).

- (ii) In relation to point (b) of the staff recommendation the following additional criteria be added:

That the area of stopped road will not create, or have the potential to create, an additional Lot from the amalgamated property.

Staff Comment: Agreed. Draft staff recommendation adjusted accordingly - See Post Board Consultation Staff Recommendation below.

- (iii) In relation to page 24 of the report under the heading Market Value of the Road that the following words be added “to require the valuation to be based on the highest and best use principles and that consideration be given to the added value it creates for the property that it is being amalgamated to”.

Staff Comment: Agreed. Draft Policy adjusted accordingly (See paragraph 14c).

- (iv) To ensure that the policy makes it clear that the Council will not carry costs arising from hearings (including the costs of staff time, and any hearing costs).

Staff Comment: Agreed. Draft Policy adjusted accordingly (See paragraph 14c).

- (v) That staff advise Community Boards via informal email or memo of any road stopping applications proposed to be dealt with by staff within its ward, allowing one week to gather any elected members input.

Staff Comment: Staff agree to adopt a process that where applications proposed to be dealt by staff under delegated authority be circulated informally to board members for comment (similar to the liquor licensing application process) prior to the application being processed.

- (vi) That the Council note that the experience of the Spreydon/Heathcote Board in relation to hill area land is different to the experiences of Boards dealing with flat land.

Staff Comment: Noted.

FENDALTON/WAIMAIRI

The Board did not agree with several of the staff recommendations set out following paragraph 31. Instead, the Board **decided** to recommend:

- (a) That the Council adopts the 'Christchurch City Council Road Stopping Policy' in the form attached to the report to the Board.
- (b) That the Council's power to accept or decline an application from either a Council business unit or from any other person to stop legal road shall be delegated to the Community Board for the Ward within which the legal road proposed to be stopped is situated.
- (c) That the Council's powers under sections 116, 117 and 120 of the Public Works Act 1981 and Sections 319(h), 342(1)(a) and 345 of the Local Government Act 1974 (excluding the power to hear objections and recommend to the Council whether the Council should allow or otherwise any objections received to road stopping procedures pursuant to the Tenth Schedule of the Local Government Act 1974 and the Council's powers under paragraph 5 of the Tenth Schedule) in relation to road stopping and the disposal of land that was previously stopped road be delegated to the Community Board for the Ward within which the proposed legal road is situated and to be exercised in accordance with the Council's Road Stopping Policy.
- (d) That the power to determine (in compliance with the Council's Road Stopping Policy) which statutory procedure should be employed to undertake a particular road stopping (either under the Local Government Act 1974 or under the Public Works Act 1981) be delegated to the Community Board for the Ward within which the proposed legal road is situated and to be exercised in accordance with the Council's Road Stopping Policy.

Staff Comment: Reference is made to paragraph 5 of this report for comment relevant to this Board's recommendation.

HAGLEY/FERRYMEAD

The Board did not agree with the staff recommendations set out following paragraph 31. Instead, the Board decided to recommend to the Council that the policy be adopted as a draft and put out for public consultation

Staff Comment: Reference is made to paragraphs 28 to 31 of this report for comment relevant to this Board's recommendation.

BOARD COMMENTS (in addition to recommendations with staff comments noted)

AKAROA/WAIREWA

The Board considered a report which requested its comments regarding the adoption of a formal policy in relation to the stopping of legal road.

The Board discussed the proposed Christchurch City Council Road Stopping Policy 2009 and asked that its comments be taken into account prior to the final document being presented to the Council for adoption.

The Board was concerned that there could still be instances under the proposed policy where staff would process a road stopping without being fully aware of local circumstances, for example proposed future extensions of the rail trail. Members felt there was a need for a “safety net” between cases of minor and major road stopping.

Staff Comment: Staff agree to adopt a process that where applications proposed to be dealt by staff under delegated authority be circulated informally to board members for comment (similar to the liquor licensing application process) prior to the application being processed.

The Board also felt there needed to be more emphasis on the possible future need for walkways, cycle routes and other alternative road uses in addition to the normal vehicular needs.

Staff Comment: Staff agree and provided for additional wording in paragraph 5(c) of the draft Policy.

In general the Board considered that road stopping should be processed under the Local Government Act so that there was an element of public consultation in the process.

Staff Comment: The statutory process to be used depends on the circumstances as set out in paragraphs 8 to 10 of the draft Policy.

HAGLEY/FERRYMEAD

Summary Comment

Board members made specific comments on the lack of information provided to the Board in advance of consideration of this report, the need for public consultation before the Council considers adoption of the policy, and a clear definition of minor and controversial road stopping (to clearly show difference between staff and Board delegations). Some concern was raised at costs of undertaking consultation on a draft policy. Staff undertook to include Board member comments in the report to the Council.

Questions asked/points raised by Board Members

- Question regarding applications from more than one person to road stopping.
- Question regarding use of green space areas.
- Answer/Clarification – Applications would usually be for land that the Council is not using. Would not be selling land with amenity value for public – or land utilised by any other area of the Council. In reality unlikely that land would be sold to an unaffected party.
- Question regarding absence of clarification of delegations in policy.
- Answer/Clarification – Policy is guideline and criteria for road to be stopped.
- Question regarding getting more than one valuation for land.
- Answer/Clarification – If there were concerns with valuer wouldn't use them. Don't see need to get more than one valuation, double cost unnecessary.
- Question regarding title policy of *Road Stopping Policy* – policy seems to be more about disposal of property.
- Answer/Clarification – Two parts to road stopping – examples given.
- Question regarding use of road stopped land for other Council purposes (example of wheelie bins). Who is making the decision about the future use of the land? Is process robust?
- Answer/Clarification – System is robust, staff always considering long term usage of Council land. Reference to evaluation criteria.
- Question regarding consultation requirements in regard to this new policy.
- Answer/Clarification – Not suggesting change to current practices – consultation undertaken as required under PWA and LGA. Policy proposes minor stopping delegated to staff, anything other than minor to Community Board. Statutory processes are not altered, only change is delegations.

- Question will policy go out for public consultation? Public consultation for other options of land use.
- Answer/Clarification – No. This is administrative instrument. Went to the Council in August – now to all eight Community Boards – comments by Community Boards to be taken back to the Council.
- Question does this fit within LGA to make policy without community consultation.
- Question regarding the criteria.
- Answer/Clarification – Answer in recommendations (b). Intend staff have delegation in minor stopping, not controversial. Went through criteria, confirmed they comply with legislation.
- Question/Comment – concern at this, would have been good for a Seminar to the Board(s). Members haven't had opportunity to look at other options. Public have had no chance to give their view. Keen to support it going out to public consultation, but not adopted as it is.
- Question/Comment – Why is this being done at this time (why now)?
- Answer/Clarification – examples of recent activity given.
- Clarification – Report is going to all Community Boards - comments/recommendations from Boards to be collated by staff and presented to the Council in one report. The policy is an endeavour to provide better service as at present no policy covers this area.
- Question/Comment – Need a clear definition of what is minor - dealt with under staff delegations and what is controversial (or significant) - dealt with by the Community Board.

Main areas of concern/comment

- Lack of information provided to Board in advance.
- Necessity of public consultation on draft policy.
- Definition of minor and controversial road stopping/disposal – to show difference between staff and Board delegations.
- Further point made regarding cost of public consultation on draft policy.

POST BOARD CONSULTATION STAFF RECOMMENDATION

Following the discussion with the eight community boards, several of the original recommendations have been amended accordingly.

It is recommended that the Council resolves:

- (a) That the Council adopts the 'Christchurch City Council Road Stopping Policy' in the form attached to this report.
- (b) That the Council's power to accept or decline an application from either a Council Business Unit or from any other person to stop legal road be delegated to the Corporate Support Unit Manager **provided that** such application shall meet the following criteria:
 - The area of road to be stopped will not constitute a complying lot under the City Plan on its own account nor will its amalgamation with the adjoining lot create a new potential for the adjoining lot to be subdivided; and
 - It will be necessary for the stopped road to be amalgamated with the certificate of title to an adjoining property; and
 - The owner of an adjoining property is the logical purchaser of the stopped road; and
 - That the proposed road-stopping complies with the Council's Road Stopping Policy, and
 - The area of road to be stopped is not adjoining a reserve or waterway. (new from original staff recommendation).

- (c) That where the Corporate Support Manager's delegated authority under paragraph (b) of this resolution shall apply:
- (i) That the Council's powers under sections 116, 117 and 120 of the Public Works Act 1981 and Sections 319(h), 342(1)(a) and 345 of the Local Government Act 1974 (excluding the power to hear objections and recommend to the Council whether the Council should allow or otherwise any objections received to road stopping procedures pursuant to the Tenth Schedule of the Local Government Act 1974 and the Council's powers under paragraph 5 of the Tenth Schedule) in relation to road stopping and the disposal of land that was previously stopped road be delegated to the Corporate Support Unit Manager.
 - (ii) That the power to determine (in compliance with the Council's Road Stopping Policy) which statutory procedure should be employed to undertake a particular road stopping (either under the Local Government Act 1974 or under the Public Works Act 1981) be delegated to the Corporate Support Unit Manager.
 - (iii) That prior to exercising his delegation, the Corporate Support Unit Manager will informally circulate to the relevant community board members for comment all applications received by him for road-stopping within their ward prior to processing the application, with Board members to respond within 7 days. (new from original staff recommendation)
- (d) That the Council's power to accept or decline an application from either by a Council business unit or from any other person to stop legal road which does not fall within the delegation given to the Corporate Support Unit Manager under paragraph (b) of this resolution shall be delegated to the Community Board for the ward within which the legal road proposed to be stopped is situated
- (e) That where the Community Board's delegated authority under paragraph (d) of this resolution shall apply:
- (i) That the Council's powers under sections 116, 117 and 120 of the Public Works Act 1981 and Sections 319(h), 342(1)(a) and 345 of the Local Government Act 1974 (excluding the power to hear objections and recommend to the Council whether the Council should allow or otherwise any objections received to road stopping procedures pursuant to the Tenth Schedule of the Local Government Act 1974 and the Council's powers under paragraph 5 of the Tenth Schedule) in relation to road stopping and the disposal of land that was previously stopped road be delegated to the Community Board for the Ward within which the proposed legal road is situated and to be exercised in accordance with the Council's Road Stopping Policy.
 - (ii) That the power to determine (in compliance with the Council's Road Stopping Policy) which statutory procedure should be employed to undertake a particular road stopping (either under the Local Government Act 1974 or under the Public Works Act 1981) be delegated to the Community Board for the Ward within which the proposed legal road is situated and to be exercised in accordance with the Council's Road Stopping Policy.

BACKGROUND (THE ISSUES)

32. This report seeks to:

- present the legislative and statutory provisions governing the stopping of roads;
- provide a basis of assessment to determine whether an application to stop a road should proceed or not;
- outline the statutory process to be followed under the respective legislation;
- consider delegations;
- formulate a policy for adoption by the Council.

PROPOSED CHRISTCHURCH CITY COUNCIL ROAD STOPPING POLICY 2009

NAME OF POLICY

1. This policy shall be known as the Christchurch City Council Road Stopping Policy 2009

APPLICATION OF POLICY

2. This policy shall apply to all road stoppings undertaken or proposed to be undertaken by the Council following the date of adoption by the Council of this Policy.

INTERPRETATION

3. For the purposes of this Policy the following meanings shall apply:
 - (a) "Council" means the Christchurch City Council and shall include any delegate acting under delegated authority of the Christchurch City Council.
 - (b) "road" means that part of a legal road (including any unformed road) the subject of a road stopping application to the Council.

EVALUATION CRITERIA

4. In considering an application for road stopping the Council must firstly consider whether the stopping should be initiated or not. The rules to govern this decision are outlined in the chart below.

Section 1.01

City Plan	Is the road shown to be stopped in the operative City Plan or does the stopping have any adverse impact on adjoining properties under the City Plan i.e. set backs/site coverage or the neighbourhood in general.
Current Level of Use	Is the road the sole or most convenient means of access to any existing lots or amenity features e.g. a river or coast.
	Is the road used by members of the public.
Future Use	Will the road be needed to service future residential, commercial, industrial or agricultural developments.
	Will the road be needed in the future to connect existing roads.
	Will the road be needed to provide a future or alternative inter-district link.
Alternative Uses	Does the road have potential to be utilised by the Council for any other public work either now or potentially in the future.
	Does the road have current or potential value for amenity or conservation functions e.g. walkway, utilities corridor, esplanade strip, protected trees etc.
Road adjoining any water body	If so, there is a need to consider Section 345 LGA, which requires that after road stopping, such land becomes vested in Council as an esplanade reserve.
Encumbrances	Is the road encumbered by any services and infrastructure and can they be protected by easements
Traffic Safety	Does access and egress of motor vehicles on the section of the road constitute a danger or hazard to the road users.
Infrastructure	Does the road currently contain infrastructure, or will it in the future, that is better protected and managed through ownership.

5. An application for road stopping will not proceed if the council delegate shall in their discretion determine that:
- (a) the road has been identified as providing a future road corridor; or
 - (b) the road has the potential to provide a future or alternative inter-district link; or
 - (c) 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).
 - (d) 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.
 - (e) the stopping of the road will result in any land becoming landlocked; or
 - (f) the road provides access from a public road or reserve to a watercourse or coastal marine area, unless there are sound management, ecological or environmental reasons for doing otherwise; or
 - (g) the road provides primary access to an esplanade reserve, reserve or park, unless there are sound management or ecological reasons for doing otherwise; or
 - (h) the stopping of the road will adversely affect the viability of any commercial activity or operation; or
 - (i) 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
 - (j) any infrastructure or utilities situated on the road would be better protected and managed through continued Council ownership; or
 - (k) the road stopping could injuriously affect or have a negative or adverse impact on any other property; or
 - (l) the road stopping could have an impact on a public work to be undertaken by any other agency including the Crown; or
 - (m) that the road has significant landscape amenity; or
 - (n) any other relevant circumstances apply.

MARKET VALUATIONS TO BE USED

6. All dealings with stopped road will be at the current market value as determined by an independent registered valuer commissioned by the Council and in accordance with the relevant legislation.

AGREEMENT FOR SALE AND PURCHASE TO BE ENTERED INTO

7. Where a road stopping has been initiated by a third party and the application is accepted by the Council then it will only be processed subject to the following requirements first being accepted by the applicant:
- (a) That the proposed terms of sale of the road once stopped be recorded in a formal Agreement for Sale and Purchase prepared by the Council's solicitors and signed by both the applicant as purchaser and the Council as vendor prior to the Council taking any further steps. Such agreement to be conditional to the approval of the Minister of Lands to the stopping, if applicable, and compliance with the all relevant statutes.

- (b) That the Agreement require the purchaser to meet all the costs incurred by Council in relation to the proposed road stopping, including but not limited to the following costs: staff time, hearing costs, consent costs, LINZ costs relative to any proclamation required to be made and published in the NZ Gazette, LINZ registration fees, professional fees (valuers, accredited agents), court costs, advertising, legal and survey costs.
- (c) That the purchaser will pay a deposit on execution of the Agreement sufficient to cover the Council's estimate of all the Council's costs. The Agreement will provide that in the event of the road stopping being discontinued for any reason the deposit will be refundable to the applicant less the actual costs incurred by the Council in processing the application to that point, as determined by the Council.
- (d) That when a road stopping is initiated by an adjoining landowner to the road proposed to be stopped, and the process determined to be used shall be the Local Government Act 1974 process, the Agreement will provide as appropriate that:
 - (i) 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
 - (ii) 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
 - (iii) if the applicant does not elect to cancel the agreement in the circumstances described in paragraph (ii) 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.
- (e) That if the Agreement for Sale and Purchase is cancelled for any reason the applicant will meet all costs incurred by the Council.

WHICH STATUTORY PROCESS TO USE

- 8. 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 practicable, such decisions being successfully contested by any party.
- 9. The Local Government Act 1974 road-stopping procedure shall be adopted if one or more of the following circumstances shall apply:
 - (a) Where any public right of access to any public space could be removed or materially limited or extinguished as a result of the road being stopped; or
 - (b) 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.
- 10. The Public Works Act 1981 road stopping procedure may be adopted if **all** of the following circumstances shall apply:
 - (a) Where there is only one property adjoining the road proposed to be stopped; and
 - (b) Where the written consent to the proposed road stopping of all adjoining landowners by proposed road-stopping is obtained; and
 - (c) Where the use of the Public Works Act 1981 procedure is approved (where necessary) by the relevant Government department or Minister ; and

- (d) 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; and
- (e) Where the road is to be amalgamated with the adjoining property; and
- (f) Where other reasonable access exists or will be provided to replace the access previously provided by the stopped road (i.e. by the construction of a new road).

PROVIDED THAT If any one of the above circumstances shall not apply, then the Local Government Act 1974 procedure shall be used.

PROPOSED ROAD STOPPING COSTS AND FEES (Subject to adoption by the Council in its Annual Plan)

- 11. **Where a road stopping is initiated by the Council, the costs and expenses associated with such road stopping (including Council staff time) are to be funded from the Business Unit initiating the road stopping.**
- 12. **Where any other person applies to stop a road, then that person shall be responsible for meeting all costs and expenses associated with the road stopping process as determined by the Council (including Council staff time) provided that where it is determined by the Council, in its discretion, that there is an element of public benefit to the proposed road stopping, the Council may agree that the costs associated with the road stopping should be shared between the applicant and the Council in such proportions as the Council shall in its discretion determine.**
- 13. **The Council shall not commence any road stopping procedure unless it obtains a written agreement in advance from the applicant to pay such costs and expenses.**
- 14. **The costs and expenses associated with the road stopping process will include:**
 - (a) **Application Fee**
An application fee of \$500 (GST inclusive) shall accompany a road stopping application to the Council (unless the application is made by a Council Business Unit). The purpose of this fee is cover the administration and staff costs incurred by the Council as a result of evaluating the application in accordance with this Policy. This fee is already included in the Council's Annual Plan.
 - (b) **Processing Fee**
If the applicant wishes to proceed with the road stopping application after evaluation by Council staff of the application and the preparation and presentation of the first report to the relevant Community Board or the Corporate Support Manager (as applicable), then a further non-refundable fee of \$1,000 (GST inclusive) will become due and payable to the Council to cover the staff time in processing the application from that point.
 - (c) **Other Costs**
Other 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.
 - Cost of Consents*
Any costs associated with obtaining consent to the proposal including, but not necessarily limited to, the Minister of Lands.
 - Public Advertising*
Includes the cost of public notification required under the Local Government Act 1974..
 - Accredited Agent Fees*
Includes professional and other fees incurred as a result 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 certificate(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, 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 proposed stopped road, including any additional costs that may be incurred by any ensuing discussions with the valuer as a result of the applicant querying the valuation.

Cost of Court and Hearing Proceedings

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

Staff Time

Staff time to be calculated on a time and attendance basis according to individual staff charge-out rates.

Market Value of the Road

In addition to the administrative and staff costs associated with a road stopping costs the applicant shall pay to the Council the current market value of the stopped road 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 . For the purposes of this paragraph "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 with.