

17. ROAD STOPPING POLICY

General Manager responsible:	General Manager City Environment, DDI 941 8608
Officer responsible:	Property Consultancy Manager
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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 Waiiwetu 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. 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. It is intended that the proposed policy and delegations in this report will apply to all situations where road stopping is required.
4. 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 to object, whereas with the consent of all adjoining land owners there is no such requirement under the PWA.
5. 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.
6. The recommended Policy has been developed by the Property Consultancy Team in consultation with the Asset and Planning Network Unit, the Legal Services Unit and the Survey Team.

FINANCIAL IMPLICATIONS

7. 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.

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

8. Yes.

LEGAL CONSIDERATIONS

9. 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.

10. 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.
11. 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 metres 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 Land Information New Zealand (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 procedure should be used. Currently, staff make this assessment on a case by case basis having due regard to the effect of the stopping on the public and parties other than the applicant and the likelihood of the proposal. 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 Policy document below.

DELEGATIONS

13. 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.
14. Currently, the only road-stopping power the Council has delegated is to Community Boards and relates to "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 to leave this delegation in place.

15. The Council has not delegated any other part of its road stopping powers. The practical effect of this is that all applications, whether from staff implementing Council agreed policies and strategies or from third parties require staff to draft Council reports for resolution.
16. To simplify this process, the Council may decide to delegate to staff the decision making authority to road stopping under both the LGA and the PWA.
17. Where an application to stop a road in favour of a third party is declined by staff acting under delegated authority, the issue shall be reported to the relevant Community Board for information and the applicant advised that they could take the matter up in the form of a "right of appeal" to the Board. The Community Board would then make a recommendation to Council.
18. There are compelling reasons why the Council should consider delegating these powers to staff, as follows:
 - On the adoption of a formal road stopping policy by the Council, the Council will have established in its governance role through the rules or guidelines to be implemented when road stopping decisions are considered. It would therefore be logical that the 'management' decisions of implementing the policy be delegated to staff rather than have the decision remain with elected members at either a Community Board or Council level.
 - In financial terms road stopping issues are often relatively insignificant.
 - There are generally no associated significant strategic issues.
 - Consistency in decisions across the city.
 - Both the LGA and the PWA provide for consultation according to the statutory process used.
 - Where a third party does not agree with a staff decision based on the attached policy, the relevant Community Board would be informed and asked to make a recommendation to the Council.
19. Given that road stopping process involves the application of standard rules and procedures in the attached policy, it is recommended that the power to stop road be delegated to staff.

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

20. Yes, see above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

21. Not applicable.

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

22. Not applicable.

ALIGNMENT WITH STRATEGIES

23. Not applicable.

Do the recommendations align with the Council's strategies?

24. Not applicable.

CONSULTATION FULFILMENT

25. There has been no external consultation nor is it considered necessary to do so as this is primarily an internal operational policy with no obvious or readily identified stakeholder. This report has not been considered by the Community Boards.

STAFF RECOMMENDATION

It is recommended that the Council resolve:

- (a) That the Council adopt the 'Christchurch City Council Road Stopping Policy' in the form attached to this report.
- (b) That the Council's power to determine whether an application from any party to stop any road be accepted or declined in adherence with policy be delegated to the Property Consultancy Manager.
- (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 in relation to road stopping and the disposal of land that was previously stopped road be delegated to the Property Consultancy Manager.
- (d) That the power to determine whether any proposed road stopping should be completed under the Local Government Act 1974 or the Public Works Act 1981 be delegated to the Property Consultancy Manager.

BACKGROUND (THE ISSUES)

26. 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.