



Management of Unformed Legal Roads

Auckland Transport

NOTE: this is a document may ultimately form a chapter of the Auckland Transport Code of Practice but has been approved in its current form by senior management as an interim measure to act as a tool to assist in the management of unformed legal roads .

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1.0 Purpose and Objectives

The purpose of this document is to provide guiding principles to inform Auckland Transport's operational staff when responding to common issues arising from the use of unformed legal roads. Auckland Transport has created this document in order to achieve a consistent region-wide best practice approach to the management of unformed legal roads. It also provides guidance to the public on use of unformed legal roads.

Auckland Transport is responsible for the management of roads within the Auckland transport system as the Road Controlling Authority for the wider Auckland region. This document sets out Auckland Transport's principles in relation to the control and management of unformed legal roads under the following headings:

- public right of passage
- adjoining landholders
- encroachments
- repairs and maintenance including weed control
- protection of unformed road surface
- public information and signage
- use by motor vehicles and recreational users
- livestock including cattle stops, fences and swing gates
- forestry and horticulture
- stopping or forming roads

2.0 Unformed Legal Roads – What are they?

An unformed road is as much a legal road as the formed roads that make up our public road network. Unformed legal roads may only be recorded on survey plans and not always readily identifiable on the ground (which is why they are often referred to as “paper roads”). Most have never been developed due to there being no access requirements, impractical topography, lack of funding priority or unsuitable environmental conditions. Ownership lies with either a territorial authority or the Crown. Road Controlling Authority powers are exercisable over them in the same way as other roads. This means that in Auckland, unformed legal roads are under the control of Auckland Transport. Unformed legal roads are an important component of the transport and recreation network envisaged in the Auckland Council Parks and Open Spaces Strategic Action Plan. For a full definition see section 11 Definitions.

Most unformed legal roads were established during the early days of settlement, particularly, in the period of provincial government (1854 to 1876). Before Crown land was sold, land was set aside as roads to ensure public access would be available once the land was developed. Roads were shown on survey plans, but not frequently built or used.

Unformed legal roads have the same status as any other legal road. Road rules apply, the public has the same right to use them, and the adjoining landowners are obliged to respect public use. Utility

Service Providers have the same rights to use unformed legal roads for their infrastructure that they have with regard to formed roads.

3.0 Guiding Principles

This document outlines Auckland Transport's approach to the use and administration of unformed legal roads in the Auckland region, based on the following five principles:

- **Public right of passage** – The public has the right of passage over any unformed legal road under common law, but care must be taken to not cause damage to the surface of the unformed road or trespass onto adjoining private property.
- **Adjoining private property rights** – Adjoining landowners have frontager rights to access the unformed legal road at any point along the length of their property boundary. Within their private property, landowners have a desire for privacy and to not have their property stolen, damaged or stock distressed or endangered by the public users of unformed legal roads.
- **No right of occupation** – Adjoining landholders have no right to occupy any unformed legal road and may not impede the use of them by others in any way without written permission from Auckland Transport.
- **No maintenance or construction obligation** – Auckland Transport is under no obligation to maintain or construct unformed legal roads.
- **Environmental protection and road user safety measures** – Auckland Transport has the right to restrict traffic movements on unformed legal roads for the purpose of protecting the environment, the road and adjoining land, and the safety of road users.

4.0 Statutory Provisions

The functions and powers of Auckland Transport are set out in the Local Government (Auckland Council) Act 2009 – particularly sections 45 and 46. These provisions provide that Auckland Transport manages and controls the Auckland transport system (including unformed legal roads).

Section 357 of the Local Government Act 1974 (LGA 1974) indicates that Auckland Transport is empowered to authorise an encroachment on, above or below an area of road managed and controlled by Auckland Transport (refer to Auckland Transport encroachment policy).

Under Section 22AB of the Land Transport Act 1998 Auckland Transport has the power to make bylaws relating to roads it controls.

The Auckland Transport Traffic Bylaw has been in effect since July 2012.

Other relevant statutory provisions for the use of unformed legal roads include:

- **Local Government Act 1974 (Part 21)** – Part 21 contains much of the regulatory regime that applies to roads.
- **Impounding Act 1955** – Provides for the impounding of livestock on roads
- **Public Works Act 1981** – Provides for issuing licences for occupation of roads and allows for the stopping of roads by Ministerial decision.

- **Gates and Cattlestops Order 1955** – Prescribes the form and construction requirements for certain types of gates and cattle stops which have been authorised to be placed across roads.
- **Land Transport Act 1998** – Governs the control and use of roads and allows for the making of bylaws and the rules for traffic behaviour on roads.
- **Land Transport Road User Rule 2004** – Sets the requirements for the use of roads.
- **Summary of Offences Act 1981 (s 22)** – Makes it an offence to obstruct a public way.
- **Marine and Coastal Area (Takutai Moana) Act 2011** – will stop unformed legal roads on the foreshore not already stopped under the previous Foreshore and Seabed Act 2004 if they are not in the process of being formed. The relevant land becomes public foreshore. The landward margin of the stopped road remains the boundary of the adjoining land.
- **Walking Access Act 2008** – Established the New Zealand Walking Access Commission to safeguard and enhance opportunities for public walking access to the great outdoors, while respecting private landholders' rights and property.
- **Former council bylaws still in force** – The Auckland Council website lists the bylaws that are still in force in each former council's area. Some relevant bylaw provisions include but are not limited to: environmental protection, stock control on roads, public places, signs and dog control. These bylaws will be replaced or expire by November 2015.
- **Forest and Rural Fires Act 1975** – The Forest and Rural Fires Act 1975 establishes responsibility for the control of fires and the liability and penalties for outbreaks. The act allows a Fire Authority (Auckland Council) to exclude some or all persons from entering a forest where fire hazard conditions exist. This overrides any other access arrangements. Auckland Transport can close roads where a fire hazard condition exists.
- **Reserves Act 1977** – Covers the offence of damage caused by lighting a fire on any land including a public road.
- **Trespass Act 1980** – Under the Trespass Act, a criminal offence of trespass is committed by a person who, after being warned to leave by the occupier of private land, neglects or refuses to do so. Section 8 of the act also contains requirements regarding ensuring that gates are left as they were found.
- **Dog Control Act 1996** – Enables Auckland Council to make dog access rules on any public place in a bylaw. The Auckland Council Dog Management Bylaw 2012 expressly states that its general rule requiring dogs to be controlled on a leash when on a road does not apply to unformed roads, or roads surrounded by a park (Schedule 1(3)). Where an unformed road is surrounded by a park, the unformed road is considered part of the park (Clause 5(1)) and the dog access rule for the park will apply. Where the unformed road does not form part of a park, dogs must be under control on a leash (Schedule 1(5)(a)).
- **Waitakere Ranges Heritage Area Act 2008** – recognise the national, regional and local importance of the Waitakere Ranges, foothills, coastal areas and the promotion of long term protection and enhancement of this area. The Act outlines the importance of heritage features for present and future generations while enabling the area to be lived and worked in.

5.0 Management of Auckland Transport's unformed legal roads

5.1 Public right of passage along unformed roads

Public users have rights of free passage on unformed legal roads as they do with public formed roads. However, unlike formed roads, unformed roads may in places not be traversable due to the condition of the surface (e.g. mud, wet grass, sand, boulders, water hazards etc.), unsuitable terrain (cliffs, ditches) dense vegetation and other natural obstructions.

Rights of free passage must also be balanced against potential damage to the environment, and Auckland Transport has the right to restrict vehicle movements on unformed legal roads for the purpose of protecting the environment or the public.

Auckland Transport Principles:

- Auckland Transport acknowledges the public has free right of passage along any unformed legal road.
- Auckland Transport has no obligation to form or improve unformed roads to enhance access conditions for users.
- Auckland Transport assumes no liability for the condition of any unformed legal road or the suitability of any unauthorised activity carried out on any unformed legal road.
- Road users must accept the condition of the road as they find it. They should take proper care of the environment and must not cause damage or modify the surface of the unformed road.
- Road users must not trespass onto adjoining property. They must not endanger or cause distress to any adjoining landholders' livestock or damage any property. This includes stock and property that may have lawful authority to be on the unformed road.
- Auckland Transport recommends the New Zealand Outdoor Access Code, produced by the New Zealand Walking and Access Commission, for users of unformed roads.
- Auckland Transport may temporarily restrict access to unformed legal roads under certain conditions including public safety and protection of the environment (for example where unformed roads traverse kauri dieback protection areas).

5.2 Identifying Unformed Roads

One of the common challenges for the public accessing unformed roads is the difficulty of correctly identifying the boundaries of the unformed road and inadvertently accessing adjoining private land. Often, the unformed roads do not follow terrain based access routes and natural obstacles such as cliffs, dense vegetation and steep terrain can limit reasonable access.

The New Zealand Walking Access Commission's online public access mapping system, the Walking Access Mapping System (WAMS) has been designed to assist the public to identify land in New Zealand open to recreational access on foot and to provide other access related information.

The Walking Access Mapping System is a free-to-use, online tool that displays publicly accessible land including unformed roads within the Auckland region. It has been developed by the New Zealand Walking Access Commission to provide clarity about land the public can access and to make planning trips into the outdoors easier. The mapping system includes high quality topographic maps and aerial imagery, overlaid with recreation information provided by partner organisations.

Auckland Transport Principles

- Auckland Transport will provide public website information regarding unformed roads including a link to inform the public about the Walking Access Mapping System (WAMS) website to assist in identifying unformed road locations and routes.
- Information signage at the entrance point to popular, accessible unformed roads may be approved by Auckland Transport on a case by case basis where the number of users warrants signage information.
- Boundary stakes may be placed along unformed roads by the adjoining landowners, or users (such as recreational groups) subject to written approval from Auckland Transport on a case by case basis.

5.3 Encroachments

Road encroachments can occur on the surface, beneath (subsoil) or above (airspace) the legal road corridor. Road encroachments are not allowed, although exceptions may be considered by Auckland Transport on a case by case basis. Granting a licence to occupy the road surface, or a lease for airspace or subsoil will generally be for only a limited period of time and be subject to various conditions and restrictions to protect public usage.

There are many situations where, despite it being illegal, unformed legal roads have been partially or fully obstructed by the placement of fence lines, locked gates, trees, buildings and other structures. Auckland Transport policy is that generally these obstructions are to be removed to preserve the right of public access. Refer to the Auckland Transport *Road Surface, Airspace and Subsoil Encroachment Policy*.

Auckland Transport Principles

- Private use of an unformed legal road (solely for private benefit) will not be permitted, unless there are exceptional circumstances or an element of public benefit.
- To aid the decision-making about encroachments on, over and under a legal road, reference is made to the Auckland Transport *Road Surface, Airspace and Subsoil Encroachment Policy*.
- Auckland Transport will generally not consider approving road encroachments where access or future access is unduly compromised.
- Complaints regarding existing encroachment on unformed roads will be investigated and assessed by Auckland Transport for removal on a case by case basis.

5.4 Damage, repairs and maintenance

Auckland Transport is under no legal obligation to maintain any unformed legal road. Given the many significant calls on the funding available to it Auckland Transport cannot prioritize expenditure on unformed legal roads. However, if Auckland Transport undertakes any construction work such as a culvert or bridge on a road that is otherwise generally unformed, it does have a duty of reasonable care in that construction, and also a duty of on-going reasonable observation of that work to ensure that any dangerous change in condition is discovered and remedied.

Causing damage to the surface of the road is an offence under the Local Government Act 1974 and this provision also applies to the users of unformed legal roads. However, Auckland Transport accepts that many common uses of an unformed legal road may cause damage to the surface of the road. The prohibition on damaging a road must be balanced against the right to use the road. Road

users must however take care to minimise damage to the road. Road users must also take into account that factors such as weather conditions may cause the unformed road to be more easily damaged.

Auckland Transport Principles

- Auckland Transport generally has no obligations or liability to maintain unformed legal roads with the exception of any structures that it constructed or is responsible for.
- Auckland Transport accepts that minor wear and tear will occur from ordinary use of an unformed legal road and will not consider this damage to the road. Intentional or unintentional damage caused by public misuse, recklessness, vehicle damage from racing, over use or wheel spins, or significant stock path erosion may be considered damage to the road.
- Deliberately digging up or landscaping an unformed legal road is a form of damage and must not be undertaken without written approval.
- Any road maintenance or construction work undertaken on unformed legal roads surrounded park land will be conducted in accordance with Auckland Council's Kauri Dieback Standard Operating Procedure and in accordance with any conditions deemed necessary and reasonable by Auckland Council to protect the surrounding park values.

5.5 Livestock including grazing, cattle stops, fences and swing gates

Unformed legal roads may also be in use for farming where they adjoin private land or where a grazing licence is held. The public should take note and be aware of any stock which are grazing and exercise care, particularly while operating a vehicle or leading a horse, dog or other animal. Members of the public intending to use an unformed road should be aware that it may be courteous to inform a farmer of their intentions.

In many instances, grazing of unformed roads has been carried out for long periods of time without the need for a formalised grazing licence. Auckland Transport has no plans to proactively insist on formal licences for all unformed roads being used for grazing. However, there may be advantages in formalising a particular situation if issues arise in relation to that road. In such cases Auckland Transport may recommend a grazing licence. Auckland Transport will also consider applications for grazing licences and other farming related activities on a case by case basis when sought by the adjoining land owner.

Where an unformed road forms the boundary between neighbouring properties, and both parties wish to have access to the road for grazing purposes, the preference is for fair and equal access. The fact that one neighbour may have historically made use of all or part of the road does not give them any greater right to be allowed to make use of this public resource. Splitting a road longitudinally down the middle is not an ideal solution as this could be an impediment to the public right of access to the whole width of the road. Therefore grazing privileges on the road should be split at an appropriate midpoint along the length of the shared boundary. Meaning that each neighbour would be allowed to use the full width of approximately half the road along their shared boundary. A mutually agreeable solution should be sought rather than mathematical precision.

Auckland Transport does not generally seek a financial return for grazing licences where there are mutual benefits for the farmer, the public and Auckland Transport.

The primary purpose of a road as a means of traveling from point to point remains paramount. Where an unformed road is used for grazing the adjoining landowner is responsible for sowing and maintaining a grass surface appropriate for both the stock and the public's use of the road.

With approval from Auckland Transport, a person may erect a fence with a suitable gate or cattle stop across an unformed legal road in accordance with s 344 or 357 of the Local Government Act 1974. A sign must be affixed to the gate indicating it is a public road.

The Gates and Cattlestops Order 1955 prescribes the form and construction of swing gates and cattle stops which have been authorised to be placed across roads. Auckland Transport prefers the use of gates rather than cattle stops as these may be dangerous to both horses and pedestrians.

Auckland Transport has the power to require the owner or occupier of any land not sufficiently separated from a road to enclose the land with a fence for the safety or convenience of the public. This may be required, for example, in situations where an agreement cannot be reached balancing the use of an unformed legal road for grazing use by the public.

Auckland Transport Principles

- Auckland Transport is not financially responsible for the fencing of any legal road boundaries under the Fencing Act 1978.
- All fences across unformed legal roads must be constructed with appropriate gates.
- Auckland Transport discourages the use of cattle stops.
- Gates across roads must not be locked.
- Temporary fencing for the purpose of stock control may be erected across an unformed legal road but must not unduly inhibit public access.
- Electric fencing along or across unformed legal roads may be necessary for the marking of boundaries and/or the containment of stock, but should display appropriate warning signs unless in an area of low public use.
- Adjoining landowners may apply for a grazing licence from Auckland Transport in order to provide for formal legal approval for their livestock to graze the unformed legal road or for any other farming purpose. A condition of grazing may be that fencing is required along the boundaries of the unformed legal road. Grazing licences are dependent upon maintaining public access.
- Where more than one adjoining landowner requests to be allowed to use an unformed road for grazing, a fair and equal split is preferred.
- Livestock that presents a hazard to the public (e.g. bulls) should not be permitted to occupy or graze unformed legal roads and must be fenced if grazing or occupying adjoining land. The public must exercise care towards any grazing animals on the paper road.
- The public, after using a gate on an unformed legal road, must leave it in the state they found it in (either opened or closed).
- Auckland Transport will not authorise the placing of beehives on unformed legal roads, as insufficient space exists for a safe distance from the hive to be maintained given the public right to use the road.

5.6 Use of Unformed Roads by Motor Vehicles

Motor vehicles can be used on unformed legal roads (where physically practical) as on a formed road, but the obligation to not damage the surface of the road also applies.

Most unformed legal roads will not have clearly delineated areas for set aside for different types of users. Vehicles, pedestrians and horses are likely to share the same space. Most unformed legal roads will therefore fall within the definition of a shared zone under the Land Transport (Road User) Rule 2004. In shared zones, vehicles must give way to pedestrians, but pedestrians must not unduly impede the passage of any vehicles.

Section 7(2) of the Land Transport Act 1998 states that a person may not drive a motor vehicle, or cause a motor vehicle to be driven, at a speed or in a manner which, having regard to all the circumstances is or might be dangerous to the public or to a person.

The Land Transport Act 1998 provides for Auckland Transport to address vehicular use of unformed legal road through bylaws. The *Auckland Transport Traffic Bylaw 2012* includes the following relevant provisions:

AT Traffic Bylaw - 17 Unformed legal roads

(1) Auckland Transport may by resolution restrict the use of motor vehicles on unformed legal roads for the purposes of protecting the environment, the road and adjoining land, and the safety of road users.

(2) A person must not use a motor vehicle on an unformed road contrary to a restriction made by Auckland Transport.

Auckland Transport Principles

- Where it is physically possible for vehicles to use an unformed legal road the drivers of them have the same right of access as other road users unless this has been expressly restricted by resolution under clause 17 of the Auckland Transport Traffic Bylaw.
- Restriction of the use of motor vehicles on unformed legal roads may be required for the purposes of protecting the environment, the road and adjoining land, or the safety of road users.

Auckland Transport expects users of motor vehicles on unformed roads to:

- Drive to the conditions;
- Be aware of the potential for other road users to be present on any part of the road and the obligation to give way to pedestrians;
- Assess the unformed surface and terrain for suitable conditions before accessing with a motor vehicle;
- Minimise damage caused by motor vehicles to the road surface (deliberate damage caused by actions such as wheel spins and burnouts for example are prohibited);
- Keep to formed tracks within the unformed road corridor where available. (Note that formed farm tracks may not necessarily be within the legal road boundaries and may not be available for public use.)

5.7 Recreation, Dogs, Horses and Hunting

Some of the unformed legal roads throughout the Auckland region are used by recreational users for such activities as walking, mountain biking, horse riding, hunting and to reach outdoor destinations such as rivers, lakes and beaches.

Walking Access

The New Zealand Walking Access Commission (NZWAC) was established in 2008 to improve public access to and enjoyment of the outdoors. The Commission has produced the New Zealand Outdoor Access Code, which aims to raise awareness of access rights and responsibilities. While the code focuses on walking access, the basic principles are applicable to other activities, such as horse riding, mountain biking, fishing and hunting.

NZWAC has developed a Walking Access Mapping System (WAMS), an online resource designed to inform the public about land open to walking access including Auckland's unformed legal road network.

Dogs

The Dog Control Act 1996 enables Auckland Council to make dog access rules for any public place by way of a bylaw. The *Auckland Council Dog Management Bylaw 2012* expressly states that its general rule requiring dogs to be controlled on a leash when on a road does not apply to unformed roads or roads surrounded by a park (Schedule 1(3)). Where an unformed road is surrounded by a park, it is considered part of the park (Clause 5(1)) and the dog access rule for the park will apply.

Where the unformed legal road does not form part of a park, permission for dogs to be on the unformed road is granted under Schedule 1(5)(b)(ii) of the Bylaw subject to the following conditions:

- Dogs must be under control and on a leash where the land adjoining the unformed legal road is a farm or there are stock permitted to graze on the unformed legal road.
- Where the land adjoining the unformed legal road is forest, (bush or undeveloped), dogs may be off-leash, but must be under control.

Where the land adjoining the unformed road is forest, bush or otherwise undeveloped but special circumstances exist to require that dogs be prohibited or on a leash, notices will be erected to indicate these controls.

Horse Riding

Horse riders have the same rights to use an unformed legal road as a legal formed road, but must also remember to take care to minimise damage to the environment. The road surface may include grass and uneven terrain which may not be suitable for horse riding in all weather conditions. Horse riders are to exercise care when using the unformed legal road to minimise the damage caused to the surface of the road. Auckland Council's *General Horse Riding Pass Codes and Conditions* sets out the reasonable use of bridle paths within the Parks network. Auckland Transport endorses these standards of etiquette for horse riding in shared public places such as unformed legal roads.

Mountain Bikes, Motorbikes and Four Wheel Drives

While mountain bikes, motorbikes and four wheel drives are classified as vehicles in the Land Transport Act 1998, they may not require formed roads. Riders and drivers of vehicles have the right of passage to any unformed legal road. They must not cause damage, modify the surface of the unformed road or enter adjoining private property. Riders and drivers of mountain bikes, motorbikes and four wheel drives may not ride on footpaths as they are intended solely for pedestrian use in accordance with the Road User Rule.

Hunting

Hunting on unformed legal roads commonly used by other recreational users is unsafe. Hunting may require both the carrying and discharging of firearms. Persons using an unformed road for hunting will be able to carry out all of the activities that are lawful on a formed road, including the right to carry a firearm (must be unloaded if in a vehicle). Unformed legal roads are public places for the purposes of the Arms Act 1983. Therefore, the discharging of a firearm on an unformed legal road so as to

endanger property, annoy, or frighten any person is prohibited. The firearms user may need to possess a current game bird hunting licence to comply with the Wildlife Act 1953, and/or a Department of Conservation (DoC) entry permit to comply with the Conservation Act 1987 on land administered by DoC. Other categories of land, such as forestry land, will also have specific entry permit requirements.

Auckland Transport Principles

- Auckland Transport recommends the New Zealand Outdoor Access Code as the code of responsible conduct for recreational users of unformed legal roads.
- All recreational users have an equal shared right of access to unformed legal roads.
- Persons walking, using vehicles or horses to access unformed legal roads must minimise damage to the surface of the road.
- Discharging firearms on unformed legal roads commonly used by other recreational users is prohibited.

5.8 Risk of Fire

Where unformed roads pass through forests or bush, fire caused by a member of the public using the road is a significant risk. The Forest and Rural Fires Act 1977 establishes responsibility for the control of fires and penalties for outbreaks. The Act allows Auckland Council as the Fire Authority to exclude some or all persons from entering a forest where fire hazard conditions exist overrides any other access arrangements. The cost resulting from a fire outbreak lies with the owner of the land on which the fire ignited, if the cause and person responsible are not identified.

Auckland Transport Principles

- Auckland Transport will rely on the advice of the Designated Auckland Council Rural Fire Officers to restrict access to unformed roads on a case by case basis in times of extreme fire risk.

5.9 Trees, Crops and Vegetation

Unformed legal roads sometimes feature illegally planted trees, grown and managed by the occupiers or owners of adjoining forestry and horticultural land. Adjoining landholders have no legal right to ownership or occupation of the unformed legal road. As trees are affixed to the land, any trees on a road are owned by Auckland Council and are under the management and control of Auckland Transport. Legally no trees may be planted on a road without the express permission of Auckland Transport in accordance with section 357 of the Local Government Act 1974.

The growing of trees can become a practical concern if the tree(s) unduly obstructs public access through the unformed legal road.

Any approved tree and vegetation works should have regard to their potential environmental impact.

Auckland Transport Principles

- Encroachment issues relating to trees and crops will be considered on a case by case basis. Auckland Transport will establish and maintain guidelines for circumstances and criteria where trees are generally required to be removed.

- Auckland Transport is unlikely to approve an application for the planting of crops or trees over all of an unformed legal road as these would be likely to unduly obstruct the use of the road.
- Auckland Transport requires anyone wishing to place any object upon or disturb vegetation upon a road to apply for permission in advance (with the exception for mowing). Unformed legal roads must not be landscaped without written approval.
- Landowners must apply for a licence from Auckland Transport in order for their trees to legally occupy the unformed legal road.
- Auckland Transport will over time endeavour to formalise existing encroachments with written licences and conditions which will be appraised and granted on a case by case basis.
- As the ownership of any lumber or produce from any illegal plantings may not rest with those who planted and maintained them, any licences for forestry or horticultural encroachments will need to specifically deal with these issues.
- Auckland Transport is not opposed to adjacent landowners maintaining unformed roads through grazing and weed control in return for the benefits of use, as long as reasonable access for vehicles and recreational activities is maintained.

5.10 Weed Control

Auckland Council's *Weed Management Policy* prescribed objectives and policies for weed management to all land owned or administered by Auckland Council and its CCO's for the management of weed in council owned land, including CCO's. In addition, Auckland Transport is developing a *Vegetation in Road Corridor Policy* for implementation in 2014 to give effect to the weed management policy. This policy covers all roads controlled and managed by Auckland Transport, including unformed roads.

Auckland Transport Principles

- Landowners adjoining an unformed legal road should take responsibility for keeping the road free of weeds if they are using the road for farming purposes.
- Weeds may be removed by road users for the purpose of continued access. However, working parties to clear large amounts of vegetation are not permitted without authorisation from Auckland Transport.

6.0 Stopping of Unformed Legal Roads

There are two methods for removing the status of a legal road:

- 1) By a process referred to as 'road stopping' under the Local Government Act 1974 (as opposed to temporary road closures where the underlying status of being a road returns after the closure), or,
- 2) By the Minister for Land Information who may stop a road under s 116 of the Public Works Act 1981.

Auckland Transport can stop roads by following the procedure set out in Schedule 10 of the Local Government Act 1974, which involves consultation of publicly notified plans. If the road is in a rural area, the consent of the Minister for Land Information must be obtained for the road to be stopped. If there are objections to the road stopping these will need to be determined by the Environment Court.

Assessment of whether a road should be stopped is based on a number of factors (including current and possible future use) to determine whether the need for the road for public use is outweighed by the need for the stopping. Once a road has been stopped, Auckland Council is responsible for determining how the land will be used or disposed of. In practice, the purpose of the road stopping often determines how the land will be used. Stopped roads bordering waterways must become esplanade reserves.

Auckland Transport Principles

- Auckland Transport will not itself seek to have unformed legal roads stopped.
- Auckland Transport will consider applications for the stopping of unformed legal roads on a case by case basis - all associated costs will be met by the applicant.

7.0 Formation of an Unformed Legal Road

Auckland Transport has no obligation to form any unformed legal roads, and currently has no forward capital works programme to form or improve unformed roads.

However, Auckland Transport will consider applications from adjacent property owners, developers and interest groups to construct carriageways, cycle tracks, bridle paths and footpaths within unformed legal roads at the applicant's expense, where this is vital for development or where significant public access benefits are clearly demonstrated. The process for application and approval is generally set out in the Auckland Transport *Road Surface, Airspace and Subsoil Encroachment Policy*, section 7.

Before any party can begin excavating or construction in an unformed legal road of any carriageway, cycle track, bridle path or footpath the following are required:

- Consent from Auckland Transport; and then:
- Any necessary regulatory consents, for example resource consents or building consents, which can be applied for from Auckland Council;
- An investigation to determine whether any utility services run beneath the road and if they could be affected by the proposed works;
- Assessment of biosecurity risks associated with the proposed development;
- A Corridor Access Request is required for any excavation within the road corridor. Applicants are to apply on the www.beforeudig.co.nz website;
- A construction and maintenance agreement from Auckland Transport setting out the specification and on-going maintenance conditions required to be followed by the applicant;
- A first ranking memorandum of encumbrance registered against the title(s) of the applicant's lot(s) if the applicant is the adjoining land owner, will record their responsibility to maintain that part of the road.

The exception to the above requirements is when the unformed legal road is proposed to be formed to serve a private development. Agreement for the developer to form a road within unformed road corridor will need to be negotiated. Additionally in these cases, the resource consent application would be processed by Auckland Council's development engineers with input from Auckland Transport Operations and Maintenance staff. The formed road would be required to be built in accordance with the conditions of the resource consent, approved engineering drawings and construction standards that are monitored the Auckland Council development engineers. Upon

acceptance at completion by Auckland Council and Auckland Transport, the newly formed road(s) are vested to Auckland Transport to manage and maintain. Therefore, in this case, there is no requirement for a construction and maintenance agreement or a memorandum of encumbrance.

Auckland Transport Principles

- Auckland Transport will only form currently unformed legal roads where this is necessary for network development.
- Auckland Transport will consider applications for other parties to construct carriageways, cycle tracks, bridle paths and footpaths etc. on a case by case basis.
- All costs for processing the application, construction and maintenance must be borne by the applicant.
- The standards and specifications for the construction of carriageways, cycle tracks and footpaths in unformed legal roads must be in accordance with any relevant provisions of the *Auckland Transport Code of Practice (ATCOP)*. Any departures from standards or specifications must be approved by Auckland Transport.
- Any matters not covered by *ATCOP* must comply with any relevant NZ Standards standard.

8.0 Enforcement

Encroaching on the road surface, airspace or subsoil of an unformed or formed legal road without Auckland Transport's consent or an encroachment lease or licence is a breach of section 357 of the Local Government Act 1974 and can lead to prosecution. Section 357 states:

"that every person commits an offence who, not being authorised encroaches on a road and is liable for a fee not exceeding \$1,000 and, where the offence is a continuing one to a further fine not exceeding \$50 for every day the offence continues and may be ordered to pay costs incurred by the council (Auckland Transport) in removing any such encroachment".

Auckland Transport would firstly seek to either have the encroachment removed voluntarily, or request the encroacher to apply for an encroachment licence, lease or road stopping (if applicable) before such action would be considered.

In addition, there are court imposed fines for breaches of Auckland Transport bylaws made under Local Government Act 1974 and Land Transport Act 1998 for unlawful activities on roads.

9.0 Monitoring and Review

This document will be reviewed on at least a three year review cycle.

10.0 Related documents

This document is related to the following:

- Auckland Transport *Road Surface, Airspace and Subsoil Encroachment Policy*;
- Auckland Council *Parks and Open Spaces Strategic Action Plan*;

- Auckland Council *Kauri Dieback Standard Operating Procedure*;
- Auckland Council *General Horse Riding Pass Codes and Conditions*
- Auckland Council *Weed Management Policy*
- New Zealand Walking Access Commission *New Zealand Outdoor Access Code*

11.0 Definitions

The following definitions apply in this document:

Council a territorial authority –Auckland Council.

Formation In relation to roads, formation means the same as construction of the road and includes gravelling, metalling, sealing or permanently surfacing the road.

Legal road has the same meaning as **road** in the Local Government Act 1974 (Section 315). In short, it covers the total area of land between road and adjoining property boundaries including:

- carriageway (formed road intended for vehicles)
- footpath including kerb and channelling, bridges gates, drains and other places within legal road intended for use by the public
- cycle ways and cycle paths
- land that is legally designated as road but is not currently formed as carriageway or footpath (road corridor, unformed or paper road)
- subsoil below the legal road
- airspace above the legal road

LINZ: Land Information New Zealand is a New Zealand government department responsible for land titles, geodetic and cadastral survey systems, topographical information, hydrographic information, managing Crown property and a variety of other functions.

A **Lease** confers a legal or equitable estate in the land. The road surface cannot be leased.

A **Licence** is personal permission to enter the land and use it for specified purposes which does not confer any estate or interest in the land on the licensee.

Road Encroachment occurs where:

- public access along legal road is restricted by excavation or an object, temporary or permanent, which is placed on legal road with or without prior approval of Auckland Transport, or
- a deliberate or inadvertent action causes an area of legal road to be used or occupied for private benefit (exclusive or otherwise).

A **structure** on, above or below a legal road includes any kind of physical construction or addition

A **road encroachment licence** authorises a right to occupy an area of legal road. However, it does not give the licence holder exclusive possession in the way that a lease would. A licence can be

revoked on one month's notice or such other terms determined by Transport. It does not provide an interest in the land. A licence will usually include a condition that public access must be maintained at all times.

Road stopping is the process of removing the legal status as a road from a formed or unformed road and creating a fee simple title over that area of land as set out in section 342 of the Local Government Act 1974.

Unformed legal road is:

- any road originally laid out over Crown land and marked on the ground and record maps; or
- any road originally laid out on Crown land under the authority of any Act or Ordinance, on any Crown grant record map, but not marked or laid out on the ground;

Where the road has not been constructed by any of gravelling, metalling, sealing, or permanently surfacing of the road undertaken by Auckland Transport, and is neither substantially formed or made for the use of the public.

Paper road a term often used to refer to an unformed legal road. The use of the term 'unformed legal road' is preferred in this document as 'paper road' can appear to reduce the status of the roads as legal roads with the same rights of use as any other road.

Utility Service providers, these include any utility service providers that are legally entitled to use and occupy the subsoil or airspace for the installation of utility services such as gas, water, power, traffic control, telecommunications, wastewater, storm-water, post boxes etc. The utility service providers can either be publicly or privately owned.