



Unformed Legal Roads Policy

Auckland Transport

NOTE: this is a draft policy that has not yet been assessed or approved by senior management or the AT Board of Directors. This draft policy is therefore not official Auckland Transport policy and the final version of the policy put forward for official consideration may differ considerably from this version.

DRAFT

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For review by
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- feedback due by
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1.0 Policy Statement

The Auckland Transport Unformed Roads Policy outlines its approach to the use and administration of unformed legal roads in the Auckland region. The policy has 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 paper 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.

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 roading networks. 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 Policy 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.

- **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 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 within or surrounded by a park (Schedule 1(3)). Where an unformed road is within or 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.

Auckland Transport Policy

- 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 must be removed to preserve the right of public access. Refer to the Auckland Transport [Road Surface, Airspace Encroachment Policy](#) which is available online.

Auckland Transport Policy

- Private use of an unformed legal road (solely for private benefit) will not be permitted, unless there are exceptional circumstances and/or there is 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

- Electric fencing along or across unformed legal roads is discouraged and should only be used in areas of low public usage with appropriate warning signs.
- Landowners must apply for a grazing licence from Auckland Transport in order for their livestock to legally graze the unformed legal road or for use 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.
- Auckland Transport will over time endeavour to formalise existing grazing arrangements with written licences and conditions which will be appraised and granted on a case by case basis.
- Livestock that presents a hazard to the public (e.g. bulls) will 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).

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 Policy:

- 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.

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](#) set 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.

Beehives

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.

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 or parts of formed roads or tracks 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 gamebird 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 Policy:

- 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.

5.10 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 Policy:

- 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 Policy:

- 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

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

10.0 Related Policies

The Auckland Transport *Unformed Legal Roads Policy* is related to the following:

- The Auckland Transport *Road Surface, Airspace and Subsoil Encroachment Policy*

11.0 Policy Definitions

In terms of this *Unformed Legal Roads Policy* the following definitions apply:

Council a territorial authority –This is 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)

Change History and Approval

Approval of the Project indicates an understanding of the purpose and content described in this document. By signing this document each individual agrees work should be initiated on this project and necessary resources should be committed as described herein.

PREPARED BY:	REVIEWED BY:	REVIEWED BY:	REVIEWED BY:	APPROVED BY:
DATE:	DATE:	DATE:	DATE:	DATE:

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