

Policy for Council Maintenance of Previously Unmaintained Roads

1. Relevant Legislation

- Local Government Act 2002
- Local Government Act 1974
- Land Transport Management Act 2003
- Public Works Act 1981
- Te Ture Whenua Māori Act 1993

2. Definitions

Dwelling	means any building or structure used and occupied for human habitation or intended to be so used, but excludes mobile homes, caravans or any building or structure used solely for a seasonal vacation purpose.
Community facility or activity	means Marae, urupā, halls, facilities and activities for tourism, accommodation or recreation.
Landowners	means the registered owners or land administrators shown on the record of title for the affected property (whether General Land or Māori Freehold Land), or in the case of Māori Freehold Land as otherwise directed by the Māori Land Court.
Maintenance	Activities undertaken to maintain Council's specified level of service
Maintenance Group Category	Council's system for classifying rural roads
Māori Roadway	a road 'laid out' over Māori land under section 316 of Te Ture Whenua Māori Act 1993 or any equivalent Act
Public Road	has the same meaning as defined in the Local Government Act 1974.
Unformed Road	means (for the purposes of this policy) a parcel of land that is legally recognised as a Public Road or a Māori

Policy for Council Maintenance of Previously Unmaintained Roads

Roadway shown on a survey plan that is either not formed as a road, or is partly formed as a road, and is not currently maintained by Council. It explicitly excludes private roads.

3. Policy Objective

- 3.1. To provide certainty around the conditions which must be satisfied before Council will assume responsibility for maintaining an Unformed Road previously unmaintained by Council.

4. Background

- 4.1. The Western Bay of Plenty District roading network includes formed roads and a significant number of unformed roads.
- 4.2. The Te Ture Whenua Māori Act 1993 provides for the laying out of roadways over Māori land by orders of the Māori Land Court. Roadways over Māori land provide access over Māori land to other Māori land, or sometimes to general or Crown land. The title to the underlying land remains with the Māori landowners.
- 4.3. The Māori Land Court has the power to define or limit who can use a Māori roadway and define or restrict the rights of the users as it sees fit. Any restrictions would be set out in an order of the Court. Unless the Māori Land Court has ordered otherwise:
 - a) All people have the right to use a Māori roadway as if it was a public road.
 - b) Anyone with land adjoining a Māori roadway can use it for access.
- 4.4. Section 324A of the Local Government Act provides Council with power to maintain, repair or improve Māori roadways subject to the prior consent of the owners. Approximately 25 percent of Māori roadways in the District have been formed to vehicle access standards, and 13 Māori roadways (total 4.6km) have been maintained by Council under agreements with the owners since 2007.
- 4.5. Under section 22 of the Land Transport Management Act, activities relating to Māori roadways may be eligible for funding from the National Land Transport Fund if those activities are included in a Regional Land Transport Plan. The Bay of Plenty Regional Land Transport Plan 2021/31 recognises that allocation of land transport funding to Māori roadways will contribute to the Plan's long-term objectives by ensuring that Māori communities

Policy for Council Maintenance of Previously Unmaintained Roads

have access to a transport network that is fit for purpose and provides them with a range of travel choices.

5. General Approach

5.1. Council will assume responsibility for the maintenance of an Unformed Road previously unmaintained by Council provided that:

5.1.1. Landowners for all properties whose only access to their properties is from the Unformed Road have approached Council in writing with a request for maintenance; and

5.1.2. If the Unformed Road is a Māori Roadway, Council has received written confirmation from the Māori Land Court that there is no order for exclusive use; and

5.1.3. At the time that the request is made in accordance with clause 5.1.1 the Unformed Road is already formed to such an extent that it provides satisfactory access for those vehicles servicing activities along the road, which in any event must consist of at least a single lane carriageway gravel road; and

5.1.4. The Unformed Road provides the only access for at least three dwellings on separate certificates of title where the entrances to those dwellings is no more than 500 metres apart from each other;

or

5.1.5. The Unformed Road provides the only access for at least five dwellings where the entrances to those dwellings is no more than 500 metres apart from each other.

5.2. For the purposes of calculating the number of dwellings at clause 5.1.4 and 5.1.5 above, a community facility or activity shall be deemed to be the equivalent of one dwelling.

6. Where an Unformed Road is partly formed outside the legal road boundaries

6.1. If an Unformed Road has been partly formed and part or all of this formation lies outside the legal public road or Māori Roadway boundaries such that some or all of the formed road is located on private land adjoining the road parcel, Council will not agree to maintain that road unless:

Policy for Council Maintenance of Previously Unmaintained Roads

- a) the owners of the land upon which the road is formed agree through a legally binding agreement to transfer that area of land upon which the road is formed to Council at no cost in accordance with clause 6.2; or
- b) The owners of the land upon which the road is formed agree through a legally binding agreement that the road will be formed across their land for public access in perpetuity; or
- c) That the road is re-formed by the owners to be wholly located within the legal road boundaries

And

- d) all other conditions set out in clauses 5.1.1 to 5.1.5 have also been met.

6.2 Where a transfer of land is required in accordance with clause 6.1.(a), that transfer will be effected by way of the usual road legalisation process provided that:

- a) The Council shall fund the necessary costs to survey and legalise the road;
- b) The landowners shall fund any legal costs they incur.

7. Council Discretion

7.1. If through a change in circumstances any of the conditions set out in clauses 5 and 6 are no longer able to be met, Council may, in its sole discretion cease the maintenance of the road and leave the road at the standard existing when Council assumed responsibility for its maintenance, or better.

8. Conditions for Ongoing Council Maintenance

8.1. When all of the conditions set out in clause 5 (and where applicable, clause 6) have been met then Council will take over the road maintenance on the following basis:

- a) Previously unformed roads will be maintained by Council's roading contractor(s) and maintained to the same level of service applied to public roads (at Maintenance Group Category 7);
- b) Unformed Roads approved for maintenance investment will be added to Council's Road Asset Management and Maintenance database schedule and included in Council's road maintenance contract.

Policy for Council Maintenance of Previously Unmaintained Roads

- c) Council will determine when to undertake any required road legalisation as set out in clause 6.

9. When the Policy doesn't apply

- 9.1. This Policy does not apply if a landowner has previously reached agreement with Council (whether through a consent process or otherwise) that access to a particular property or properties will be granted without the usual requirement to form the road to Council's prescribed standards. In these cases, the obligation to maintain the road will continue to be as previously agreed.

Associated Council Policies and Procedures

- Western Bay of Plenty District Council's Long Term Plan;
- Western Bay of Plenty District Council's Annual Plan;
- Seal Extension Prioritisation Policy.

Group	Infrastructure Services	Contact (3rd Tier Manager)	Transportation Manager
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