

# Roading Exchange Policy – proposed amendments November 2018

## 1 Purpose

To ensure that Auckland Council (AC) and Auckland Transport (AT) have a transparent and consistent process for evaluating and responding to requests from developers to exchange existing road assets for new roads within residential subdivisions, commercial or industrial developments or redevelopments. This policy enables AC and AT to be satisfied that an exchange of existing road assets for new road assets provide a significant public good benefit(s) that would not otherwise be realised without the development.

## 2 Context

AC and AT own and control roads in the Auckland region. A pre-requisite for this policy to apply is that the road is stopped.

AT is the road controlling authority and manages and controls the roads owned by Auckland Council making up the Auckland transport system under the Local Government (Auckland Council) Act (LGACA) 2009 . AT has the powers conferred by the Local Government Act 1974 (LGA) to stop roads.

From time to time developers have approached AC and or AT to exchange existing roads with new roads to be developed as part of residential, commercial and industrial subdivisions. The costs of forming roads is a usually met by the developer. Existing roads (formed and unformed) are assets owned by AC and represent a significant capital investment. Both existing and new roads accepted into the Auckland transport system give rise to a significant operation, maintenance and renewal cost to AT.

The exchange of existing roading assets for new roading assets without the transfer of additional value or benefit represents a transfer of value to the developer.

AC and AT have responsibilities to ratepayers, funders, and other stakeholders to ensure the prudent management of assets ,and to achieve appropriate returns on asset investments.

This policy aims to provide clear and transparent parameters, process and statutory requirements of AT and AC in achieving the policy purpose, noting that:

1. The land included in existing roading assets has a current market value;
2. In the normal course of subdivision, the formation and vesting of roads is a cost to the developer in addition to any development contributions levied in respect of the subdivision;
3. Land occupied by roads is owned by AC and is under the management and control of AT as the road controlling authority for the Auckland transport system. AT holds powers in relation to roads conferred by the Local Government Act (LGA) 1974;
4. To give effect to any exchange requires a road stopping under the LGA 1974, which is subject to public consultation and provides for the right to object to the road stopping. On receipt of any objection to the road stopping AT is required to consider the objection and decide whether or not to uphold the objection. If AT decides to disallow the objection and proceed with the road stopping the matter must be referred to the Environment Court by the objector for hearing ; and
5. Disposal of land requires AT Board and AC committee/governing body approvals.

### 3 Core Principles

The exchange proposal must provide significant **public benefit**.

**Public benefit** includes the following:

- Enable consolidation of land, reorganisation of land holdings to enable the increase in the number of houses that would otherwise have been built without the roading land to be exchanged;
- Enable more efficient use of land;
- Enable residential and employment land to be developed more efficiently;
- Enable housing to be delivered efficiently;
- Enable acquisition of land for AT and/or AC projects;
- Deliver Improvements to the existing roading network;
- Enhance access to a transport service or facility should also be considered
- Enable the earlier delivery of a future transport project;
- Provide or deliver greater public access to and use of areas of significant ecological or recreational value, such as rivers, forests, lakes, parks or other recreational areas.

#### 3.1.1 Other Principles

##### ***Strategic Fit***

**The exchange proposal must :**

Support and enable Auckland Plan priorities:

- Support greater integration between land use and transport;
- Improve the efficiency and effectiveness of the region's transport networks;
- Make the best use of the existing transport system;
- Improve transport safety and reduce adverse impacts from transport on the surrounding environment;
- Be consistent with AT's strategic direction as outlined in the Integrated Transport Programme (ITP);
- Be compatible with relevant policy approaches adopted by AC and AT e.g. Transport funding policy.

##### ***Public /private benefits***

- Takes into account the relative private and public benefits of the exchange proposal

##### ***Economic Efficiency***

- Recognise the infrastructure required to be provided at the developer's cost under relevant statutory consents and plans;

- Maximise public benefits and other commercial outcomes for AC and AT where appropriate;
- Be cost neutral to AT (all costs associated with the proposal are met by the developer).

#### ***Effectiveness***

- Increase the supply of housing.
- Achieve enhanced transport outcomes

#### ***Compliance***

- Be assessed consistently with other exchange proposal assessments;
- Comply with legal requirements.

## **4 Organisational Scope**

This policy intends to enable good transport outcomes and efficient and effective re-development of urban zoned land in Auckland. i.e. all land within the Rural Urban Boundary excluding land zoned Future Urban.

This policy is Auckland-wide and is intended to apply where an applicant makes a request to Auckland Council and/or Auckland Transport to stop a legal road(s), either formed or unformed road, and exchange the stopped road for new road(s) constructed by the developer on the developer's land. The new roads are then vested back to Auckland Council as legal roads and then come under the management and control of AT. Prior to applying for a road stopping and road exchange, the developer must have lodged with Auckland Council:

- A pre-application for subdivision and/or land use consent;
- A subdivision and/or land use consent; or
- A plan change.

Examples:

- A brownfield road closure application that is being considered together with a re-development land use and subdivision consent; or
- A greenfield road closure application that is being considered together with a land use and/or subdivision consent.

## **5 Application Process**

Developers wishing to exchange land under the policy need to engage with AC and AT as early as possible to ensure the assessment of public value achieved through the exchange provides an appropriate opportunity for AC and AT to assess the application and if approved to enter into an agreement with the developer. The applicant must provide sufficient information to demonstrate that:

- The exchange will unlock larger public benefits if it proceeds than if it did not;
- The exchange will provide measurable public benefits of equivalent or greater value than the existing road land to be exchanged;
- The end development does not unnecessarily increase consequential opex for AT i.e. the applicant should comply with AT technical standards

- There is an increase in housing/employment that can be delivered if the exchange is made and is supported by the cost benefit analysis in 5.1.2 below, and
- The exchange allows for the better configuration of residential and business subdivisions to achieve more affordable housing than would otherwise have been achieved. Evidence will be required to be provided.

This information is assessed using a planning evaluation/cost-benefit analysis prepared by AT and DPO to consider the value of the road to be stopped against:

- The strategic fit;
- The status quo yield (i.e. current zoning allowance);
- Transport resilience;
- Urban design best practice; and
- Any improved urban (residential and business) yields as a result of re-developing the stopped road.
- The relative value of land parcels proposed to be exchanged.

### 5.1.1 Initial process of enquiry

The applicant submits their new design/proposal showing the area of road to be stopped and new roads to be created, proposed lots and scheme plan. The applicant must indicate the area of road requested to be stopped.

The application should be measured against the core principles outlined in sections 3 and 3.1.1 of this policy and as referred to in 5.1.2 below.

### 5.1.2 Cost-benefit analysis

AT and DPO staff will prepare a joint cost-benefit analysis report that assesses the proposal against this policy.

	<b>Public Benefit and Costs</b>	<b>Private Benefit and costs</b>	<b>Net benefits</b>
<b>Strategic fit of proposal</b>			
<b>Urban Design best practice</b>			
<b>Connectivity</b>			
<b>Yield (status quo)</b>			
<b>Yield (proposed)</b>			

The report is submitted to AT and Auckland Council Executive Leadership team (2 members from each T4 and above)

## 6 Standard terms and conditions

### 6.1.1 Statutory Obligation

Road stoppings related to this policy will be completed under the statutory process set out in the LGA 1974/2002. (Refer section 319 and 342, and Schedule 10 of the LGA 1974).

AT has independent statutory functions under the LGA 1974 including a statutory right to be able to exercise its governing responsibility of the road stopping process. Therefore, AT must not be confined or restricted by any contractual arrangements with a developer(s) to do so.

The applicant understands that this statutory process involves public consultation which brings the possibility of objections to be lodged. AT decides whether or not any objections are upheld or disallowed in the first instance. The statutory process involves variable timeframes which may be significantly lengthened due to objection to a proposal and legal proceedings

The applicant understands that any associated costs are to met by the applicant

There is no guarantee that a road stopping will be confirmed.

LINZ prefers that, in the first instance, local authorities apply the procedures in s342 of the LGA, given the requirements for public notification.

Road should be stopped using the LGA when there are likely to be objections to the proposal, or matters of public access to consider.

If Council wishes to use the Public Works Act 1981(PWA) it should be satisfied that:

- The extent of road to be stopped is minor
- All existing and proposed sites would be serviced by the new road layout
- There is no net loss of road or public access arising as a result of the proposal
- Land owner approvals have been obtained from the developer, Auckland Council and affected parties
- There is minimal likelihood of any additional considerations arising through public submissions/objections.

These 'tests' outlined above have been developed by AC legal and applicants wishing to use the PWA process should be vetted by AC legal to ensure consistency with this policy. The decision on whether to progress the road stopping under the PWA or LGA rests with council.

#### ***Adjoining Owner consents***

- Section 116(2)(b)(i) of the Public Works Act, the consent of the adjoining owner is not required when adequate road access is left or provided. Adequate access should include both legal and practicable access to the adjoining land.
- It is prudent to obtain adjoining landowner consent as it provides evidence that the adjoining owner has agreed to any exchange.
- The consent or a local authority under s116(2)(d) of the Public Works Act should be signed by the principal administrative officer.

### 6.1.2 Agreement

The developer must enter into an ~~Infrastructure Funding Appropriate~~ agreement, ~~(IFA)~~ commercial terms which will be agreed by Auckland Council and AT.

The developer is responsible for delivery of new roads to specified standards not to a fixed monetary value. The developer must comply with [AT's Code of Practice](#)/Transport Design Manual in relation to design specifications so as to manage consequential operational expenditure (OPEX).

~~The Subject to the succeeding paragraph, a~~ developer must provide appropriate guarantees or bond arrangements that the identified public benefit enabled by the exchange will be delivered by the date as specified within the ~~IFA-agreement~~ by the Chief Executive of AT. An ~~IFA~~

agreement will usually be required to specify the commercial arrangements between Auckland Council, the developer and AT. The quantum for a guarantee or bond will be recommended by AT staff.

The requirement for a bond or guarantee may be waived where AC and AT officers consider that:

- i) a developer is reputable, with a good history in completing similar developments, and has the financial means to complete the proposed development; and
- ii) the road(s) being stopped and created are not of material benefit to the rest of the wider roading network; and
- iii) there are appropriate mechanisms in place, whether under the Resource Management Act 1991 or otherwise, to ensure the developer is required to construct new public roads that are fully compliant with the public road standards required by Auckland Council and Auckland Transport before obtaining subdivision titles for their development.

### 6.1.3 Related Costs

The developer is responsible for payment of the fair and reasonable costs, associated with:

1. Preparing the Infrastructure Funding Agreement;
2. All statutory processes related to a road stopping and/or property transfer, including any planning assessment or other technical assessment required to support the road stopping;
3. Any costs relating to any legal advice or legal proceedings;
4. AT / AC staff time in processing the application. If additional resourcing is required to process the application, the costs will be recovered from the developer.
5. all disbursements incurred by AC and or AT in processing the application ; and
6. Any costs awarded by the Environment Court against AC or AT relating to the road stopping

## 7 Legislative Compliance

Auckland Council and Auckland Transport are required to manage their processes and procedures in accordance with the Local Government Act 1974 and 2002 and Resource Management Act 1991.

Refer <http://www.legislation.govt.nz/act/browse.aspx>.

Search the:

Local Government Act 1974/2002

Resource Management Act 1991

Local Government (Auckland Council) Act 2009;s40 Operating Principles

Public Works Act 1981

## 8 Definitions

***Auckland Transport:*** Auckland Transport (AT) is responsible for all of the Auckland region's transport services (excluding state highways), the Auckland road network, footpaths, cycling network, public parking, and public transport network (bus, train and ferry).

<b>Brownfield:</b>	Brownfield land is land within existing urban areas that is or has been in urban use already and can be developed further or redeveloped, usually to a higher intensity. <a href="http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/theaucklandplan/Documents/housinglandsupplyfaqs.pdf">http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/theaucklandplan/Documents/housinglandsupplyfaqs.pdf</a>
<b>Environment Court:</b>	Environment Court of NZ where road closure proceedings are heard.
<b>Greenfield:</b>	It is rural or open land that is being developed for urban purposes for the first time. <a href="http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/theaucklandplan/Documents/housinglandsupplyfaqs.pdf">http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/theaucklandplan/Documents/housinglandsupplyfaqs.pdf</a>
<b>IFA:</b>	Infrastructure Funding Agreement.
<b>ITP:</b>	Integrated Transport Programme.
<b>Legal Road:</b>	The LGA 1974/2002 defines a road <a href="#">here</a> .
LGOIMA	The Local Government Official Information Act Refer <a href="http://www.legislation.govt.nz">http://www.legislation.govt.nz</a>
<b>LGA 1974:</b>	Local Government Act 1974 <a href="http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM170873.html">http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM170873.html</a> / 2002 <a href="http://www.legislation.govt.nz/act/public/1974/0066/latest/DLM415532.html?search=qs_act%40bill%40regulation%40deemedreg_Local+Government+Act+1974_resel_25_h&amp;p=1&amp;sr=1">http://www.legislation.govt.nz/act/public/1974/0066/latest/DLM415532.html?search=qs_act%40bill%40regulation%40deemedreg_Local+Government+Act+1974_resel_25_h&amp;p=1&amp;sr=1</a> Available
<b>Notice of closure:</b>	notice of road closure prepared in accordance with the Local Government Act 1974.
<b>OPEX:</b>	Operational expenditure/expense. The ongoing cost for running a product, business, or system.
<b>Private benefit:</b>	A positive economic, social, environmental, or other outcome for the private sector or a non-public interest, company, individual, or organisation as a result from a development that enhance private interests whilst excluding public interests or public access.
<b>Proposal:</b>	This policy refers to a proposal in terms of a development proposal (residential, industrial, commercial) put forward to AT / AC for formal consideration.
<b>Public benefit:</b>	A positive outcome for the general public as a result from a development that is perceived to enhance an economic, social, environmental, or other factor at a local or regional level.

**Strategic fit:** Means that the proposal supports and enables Auckland Plan and PAUP priorities, supports integration between land use and transport, transport effectiveness and efficiency.

**Urban design best practice:** [The Auckland Design Manual](#) provides design guidance and the [Ministry for the Environment Urban Design Protocol](#) establishes principles for assessing whether a development is sound.

**Urban development:** The social and political process that involves development or improvement of an urban area by building [residential, mixed use, business or industrial].

## 9 References

AT's code of practice

## 10 Appendices

*Appendices will be loaded separately onto the policy document repository and hyperlinked by URL back to the originating document.*

Appendix A: AT officer delegations and AT Board governance structure

Appendix B: Auckland Council officer delegations and governance structure

## 11 Approval Agency

Senior Management – Tier 2 managers from AT and DPO have endorsed this policy.

[ELT]

## 12 Policy Sponsor

General Manager DPO

## 13 Contact People

The following people may be approached on a routine basis in relation to this policy:

Alina Wimmer, DPO

Fiona Docherty Wright, DPO

Don Munro, AT

Deborah Godinet, AT