

SM012 State Highway Control Manual

Part 11 - Consolidated Legal, Statutory, Regulatory Sections

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State Highway Declarations and Revocations

Extent of State highway network

State highways may be declared and revoked only with consent of the Secretary of Transport, in accordance with s103 of the Land Transport Management Act and promulgated by way of a notice in the *New Zealand Gazette*. Note that s60 of the Government Roading Powers Act (formerly the Transit New Zealand Act) that authorised the Board to declare and revoke State highways has been repealed. For State highway changes resulting from project work, the delegation for seeking declaration and/or revocation rests with the Chief Executive.

Appendix 1G sets out the policy and guidelines for the process to follow when revoking sections of highway and handing them over to a territorial local authority, to ensure that agreements are in place. The Board has carried out reviews of the extent of the State highway network in consultation with other affected parties and does receive requests for changes from time to time.

Intersecting roads

At intersections, the State highway reserve is generally defined as that part of the intersecting road within the extension of the boundary lines.

This definition applies to both urban and rural situations, but some territorial authority cost sharing may extend outside these boundaries (see PIKB).

Ownership of State highways

Current legislation vests ownership of State highway property in the following manner:

1. The GRP Act s44 states that all State highway reserves outside urban areas ("within a permanent speed limit of less than or equal to 70 km/h") are vested in the Crown, subject to s316 of the Local Government Act 1974. However, the Local Government Act 1974 s.316 is unequivocal that except for State highway reserves in former county areas (prior to 1 December 1974), State highway land is vested in the local authority.
 2. Therefore, all land within State highway reserves in urban areas previously controlled by a formerly constituted Borough or City is vested in the TLA whose district they are in. (All powers, functions and duties remain with NZTA unless delegated to a TLA.)
 3. All motorways that are State highways are vested in the Crown.
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Gazette Action

New sections must be gazetted where:

1. The new alignment includes complete severance from the previous State highway alignment leaving residual pieces of old road (declarations); and
 2. A superseded State highway becomes a local road (revocations).
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Residual State highway lengths

Concurrent with the gazetting of any new State highway, any residual section of former State highway that is to remain as road, will be revoked and control handed over to the TLA in terms of the Land Transport Management Act s103(5).

Advice to TLA

TLAs affected by State highway revocations are to be advised of the following as early in the project as possible:

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1. The changes that will be occurring at the time of commissioning.
 2. The residual lengths of State highway that will continue to remain as road.
 3. All genuine maintenance deficiencies that are to be made good as a State highway charge.
 4. Ask the TLA to submit in 90 days details of any work requiring attention on the residual State highway when it is revoked.

If there is no clear agreement over the extent of work required, a joint inspection should be undertaken to go over the residual length(s) to try and identify the deficiencies needing to be addressed. Deficiencies are limited to:

1. Works within the maintenance categories.
 2. The standards specified in the standard NZTA maintenance specifications for the relevant functional group in the One Network Road Classification matching the future purpose.
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Checklist

A checklist of the issues to be considered when highways are declared or revoked is included in *State Highway Revocation: Policy and Guidance* on pages 51 to 60 below.

Motorways

Control	All motorways are under the control of the Board unless it has delegated its powers to another authority under the GRP Act s62.
Ownership	All motorways that are State highways are vested in the Crown.
Authorisation and declaration	The status of all motorways must be authorised under the GRP Act s71(1) and an Order-In-Council must be made and gazetted.
Iwi consultation	<p>All requests for an Order-In-Council declaring road or land to be motorway must demonstrate that all iwi or hapu with interest in the land have been consulted in compliance with s73 of the GRP Act.</p> <p>The requirements are set out on page 60 below.</p>
Motorway opening	A motorway must be on land taken and designated for that purpose. However, if a carriageway is constructed on that land prior to a motorway declaration, it may be opened to traffic as a road under the GRP Act s79(4).
Availability for traffic	No motorway or portion of a motorway shall be opened for public traffic until it has been inspected by the Manager System Management or his/her appointee and found to be in good and efficient repair and may safely and conveniently be used for public traffic (GRP Act s79).
Services and access	The Board has absolute power to control new or existing services or accesses affected by any motorway, (GRP Act ss.76, 77, 78, 82, 83 and 84). NZTA policy on services and access is detailed in <i>Part 12: Consolidated Motorways Sections</i> .
Cost of motorways	The full cost of constructing and maintaining a motorway shall be a State highway charge unless agreed otherwise (GRP Act s81)

Statutory Framework and Operation Authority

Overview of New Zealand Transport Agency

The Land Transport Management Amendment Act (LTMA) 2008, s93 establishes a Board called the New Zealand Transport Agency (NZTA). The principal objective of the Board is to operate the State highway system in a way that contributes to an integrated, safe, responsive and sustainable land transport system.

State highway control

NZTA is empowered by the GRP Act and the LTMA to control the State highway system, including planning, design, supervision, construction and maintenance in accordance with the Act.

State highway costs

The whole cost of construction and maintenance of State highways, plus other State highway costs at NZTA's discretion, are provided by NZTA out of the National Land Transport Fund (Land Transport Management Act s8).

Application of other Acts and controls

Specific clauses of the GRP Act empower the Board to exercise certain powers in related Acts such as the Public Works Act (PW Act) and the Local Government Act (LGA).

Other Acts such as the Transport Act specifically empower the Board to exercise controls.

Specific powers

The following sections outline the broad powers contained in the various Acts and amendments to be applied to State highways.

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Government Roothing Powers Act, 1989

Introduction

The Government Roothing Powers (GRP) Act is the principal Act used to exercise powers and controls on State highways.

Powers and duties of Board

The following table details the broad powers and duties of the Board in respect of State highways:

N°	Function	Reference
1	Do all things necessary to construct or maintain (in good repair) and State highway.	s61 (1), s61 (4)
2	Exercise powers contained in the LGA in respect of roads.	s61(2)
3	Make bylaws to any of the topic headings in section 22AB of the Land Transport Act.	s61(3)
4	Make provision for the preservation of any Maori historical, cultural or spiritual interests.	s61(5)
5	Observe a restriction on entry to any land containing a dwelling, building or under certain cultivation without the owner's consent.	s61(6)
6	Give notice before entering land.	s61(7)
7	Permit vehicle parking spaces, buildings or other facilities on or adjacent to a State highway.	s68
8	Exercise control over the removal of gravel within 200 m of a bridge or culvert.	s50
9	Control encroachment, obstruction, damage etc. to State highways including exercising powers to prosecute.	s51(2)
10	Impose conditions on TLA and utility work on State highways.	s52
11	Control erection and removal of poles, towers and roadside structures.	s53, s54
12	Remove trees, hedges etc. that obscure visibility or interfere with a public work.	s55, s57
13	Control all motorways even if these are not State highways.	s80
14	Create and revoke Limited Access Roads.	s88

Land Transport Management Act, 2003, and Land Transport Management Amendment Act, 2008

Introduction

The Land Transport Management Act provides for a new focus for the New Zealand Transport Agency's business and is, along with the GRP Act, is the principal Act within which NZTA will operate.

Powers and duties of Authority

The following table details the provisions of the Act:

N°	Function	Reference
1	Funding of the land transport system including: <ul style="list-style-type: none">• The National Land Transport Fund and Account,• Land Transport programmes,• Procurement procedures,• LA interests in public transport, and• Diversion of excise duty	Part 2
2	Road tolling schemes and concession agreements.	Subpart 2
3	Administration provisions relating to NZTA, regional transport committees and miscellaneous provisions.	Part 4
4	Declare and revoke State highways, only with the consent of the Secretary of Transport	s103

Land Transport Act, 1998

Introduction

The Land Transport Act promotes and provides rules governing safe road user behaviour and vehicle and driver safety and consolidates and amends various previous enactments. It also provides for international agreements to be implemented for those matters.

Powers and duties of Authority

The following table details the provisions of the Act:

No	Function	Reference
1	Primary responsibility of participants in Land Transport System	Part 2
2	Additional responsibilities concerning road transport, including bylaws	Part 3
3	Driver licensing including Transport Services Licensing	Part 4
4	Offences relating to driving and penalties	Part 5
5	Offences relating to drugs and alcohol	Part 6
6	Driver disqualifications etc.	Part 7
7	Mitigation of penalties and appeals	Part 8
8	Enforcement of responsibilities	Part 9
9	Proceedings enforcing responsibilities	Part 10
10	Land Transport subordinate legislation	Part 11
11	The objectives and functions of the Minister	Part 12
12	Administrative provisions	Part 14
13	Miscellaneous provisions	Part 15
14	Motor vehicle registration and licensing	Part 17

Local Government Act, 1974

Introduction

The GRP Act s61 (2) gives the Board the right to exercise certain powers contained in the LGA in respect of roads.

Powers and duties of Board

The following table details the broad powers and duties authorised in the LGA.

Nº	Function	Reference
1	Form or improve footpaths and channels.	s331
2	Acquire land for and form a cycle track and make bylaws to control the use of the cycle track.	s332
3	Control the erection of monuments etc. and the provision of facilities on or under a State highway.	s334
4	Control or construct vehicle crossings at the landowner's expense.	s335
5	Require alteration to any pipe, drain or other apparatus on or under a State highway.	s337
6	Grant an easement or other right for up to 50 years for the laying of pipes for petroleum or other purposes on State highways.	s338
7	Erect on the footpath of any State highway a shelter for use by public transport or taxi passengers, subject to objection provisions.	s339
8	Permit private motor garages within a building line restriction adjacent to a State highway.	s340
9	Lease air space or subsoil including for the purpose of a pedestrian or vehicle bridge, tunnel or subway connecting the two sides of a State highway.	s341
10	Take responsibility for the provision of sufficient precautions for the general safety of the public, traffic and workmen.	s353
11	Removal of abandoned vehicles from roads as authorised by subsection 6	s356
12	Further provision related to removal of vehicles from roads as authorised by subsection 11	s356A

Resource Management Act, 1991

Introduction

The Board is required to use the processes of the Resource Management Act for State highway activities. The Act is a comprehensive document of which only the major clauses affecting work on the State highway have been listed below.

Major Clauses used by the Board

N°	Function	Reference
1	Purpose of Act promoting sustainable management	s5
2	Recognition of matters of national importance and certain existing uses protected	ss6-8
3	Restriction on land use and protection of certain land use, certain uses and works allowed	ss9-10B
4	Restriction in use of coastal marine area and beds of lakes etc.	ss12-13
5	Discharge of contaminants into environment	ss15-15C
6	Duty to avoid, remedy, or mitigate adverse effects including noise	ss16-17
7	Matters to be considered by Regional Council	ss61-62
8	Rules about discharges including greenhouses gases	ss70-70B
9	District plans	ss72-77D
10	Resource consents, type, how to apply, notification	ss87-92B and 95-95G
11	Conditions of recourse consents	s108
12	Decisions on resource consents, applications and rights to appeal	ss113-121
13	Requiring Authority (NZTA is by Order in Council dated 7/12/92, Gazette Notice 10/12/1992 No.201, 3/3/94 No.20978)	s167
14	Notice of requirement to Territorial Authority	s168
15	Designation to be provided for in district plan and effect of designation	ss175-176
16	Land subject to existing delegation or heritage order	s177
17	Alteration of designation	s181

18	Lapsing of delegation	s184
19	Subdivision, applications, consents, conditions	ss218 and s220
20	Completion certificates	s222
21	Restriction upon deposit of survey plan	s224
22	Restriction on issue of Certificate of Title	s226
23	Vesting of roads	s238
24	Environment Court Appeals etc.	ss247-307
25	Court of Appeal	s308
26	Emergency works	ss330-330B

Public Works Act, 1981

Introduction

The Board is required to use the provisions of the PW Act for certain State highway activities.

Powers to be used by the Board

The following table details the broad powers authorised in the PW Act:

N°	Function	Reference
1	Acquisition of Land for Public Works.	Part II
2	Dealing with Land held for Public Works.	Part III
3	Gazetting, Revocation, Amendment and Registration of Documents.	Part IV
4	Compensation.	Part V
5	Survey and Investigations.	Part VII
6	Legislation, Stopping and Exchanging Roads.	Part VIII

Transport Act, 1962, Traffic Regulations and Land Transport Rules

Introduction

The provision of the Transport Act and pertaining regulations gives the Board the right to exercise certain powers in respect of roads. Much of what was previously contained in the Act has been repealed and replaced by sections of various Land Transport Rules.

Powers and duties of the Board

The following table details the broad powers authorised in the Transport Act, Regulations and Rules

N ^o	Function	Reference
1	Restrict the use by heavy traffic on any section of State highway	s70AA and Reg.10 of HMV Regs (1974)
2	Make bylaws as to the use of State highways subject to publication in the NZ Gazette	ss72-74
3	Minister may ensure roading safety by requiring action to respond to public safety issues	s74A
4	Erect temporary maximum speed limit signs.	Traffic Regs 1976 s23 repealed, see s6 of the Setting of Speed Limits Rule 2017. For approved signs, see Schedule 1 of the Traffic Control Devices Rule 2004.
5	Permit over-dimensional loads.	Traffic Regs 1976 s49 repealed, see s6 of the Vehicle Dimensions and Mass Rule 2016
6	Mark pedestrian crossings subject to the provision of adequate lighting and the presence of indicators.	Traffic Regs 1976 ss91, 92, 93, 95 and 96 repealed, see s8 of the Traffic Control Devices Rule 2004
7	Permit school patrols.	Traffic Regs 1976 s97 repealed, see s8.3 of the Traffic Control Devices Rule 2004
8	Provide traffic islands, road marking, traffic signals and traffic signs.	Traffic Regs 1976 ss104-131 repealed, see ss4-7 of the Traffic Control Devices Rule 2004

9	Close a section of State highway subject to 42 days' notice (for parades, functions etc.)	Transport (Vehicular Traffic Road Closure) Regs 1965
10	Alter the classification of any State highway for heavy traffic vehicle purposes.	Reg. 3 HMV Reg (1974)
11	Issue overweight permits, permits for high tyre inflation and permits for vehicles not fitted with pneumatic tyres.	Reg. 8 HMV Reg (1974). Regs 7, 8(1), 10(1), 11(16) HMV Reg (1974) repealed, see s5 of the Vehicle Dimensions and Mass Rule 2016.
12	Prohibit certain heavy vehicles on sections of State highway.	Regs 10(3), 10(4), HMV Reg. (1974)
13	Fix weight and speed limits for any bridge.	Reg. 11, HMV Reg (1974)
14	Declare road construction zones.	Reg.12 HMV Reg. (1974)
15	Authorise a motor vehicle that is exempt from registration and annual licence fees to cross directly or proceed along a defined section of State highway.	Reg. 2A. Motor Spirits Duty Refund Reg. (1978)

Biosecurity Act, 1993

Introduction

The NZTA must take a pro-active stance in respect of its involvement in pest management. The NZTA's approach is to undertake pest control of direct benefit to the road user and the state highway network, such as for road safety purposes and aesthetics and to mitigate the adverse effects of road infrastructure maintenance and improvements.

Areas of Control

The NZTA undertakes to control plant pests in accordance with regional plant pest management strategies and within its road reserve boundaries in the following situations:

- a. rest areas;
- b. motorway reserves;
- c. weigh pit and stockpile sites;
- d. other isolated areas of road reserve mainly for road safety reasons;
- e. State highway reserves adjacent to land that is free of plant pests;
- f. State highway reserves adjacent to land where the landowner is undertaking plant pest management. In such situations, upon advice from the management agency that plant pests are to be controlled. The NZTA will undertake plant pest control on the State highway reserve. The detailed scope of work in each of these situations, should be agreed between the appropriate NZTA office (with expert advice and support as necessary) and regional pest management officers

The above approach is in keeping with NZTA's general approach to mitigate the adverse effects of road infrastructure and improvements.

Road reserve

The State highway reserve under control is defined as the road reserve bounded by existing fences or road reserve boundaries, whichever is closest to the highway centreline. Where the road reserve boundary is unknown it shall be taken as 10 metres from the highway centreline.

The above clause eliminates the requirement of expensive boundary definition surveys and ensures any reserve being leased is maintained by the lessee and not NZTA.

Adjacent land owners

Should an adjacent land occupier object to the method of plant pest control being undertaken by NZTA, the control of the noxious plants on the State highway reserve in question would need to be negotiated.

Currently, NZTA and Local Government generally control plant pests by the application of chemical sprays. To do otherwise could involve considerable extra cost. Under the Resource Management Act this activity requires public notification.

The objectors who have land adjacent to the highway are able to have the road reserve in these areas exempt from chemical spray application. Any alternative forms of pest control would need to be negotiated.

Pests under Regional Pest

NZTA should make every effort to ensure nuisance plants that interfere with

Management Strategies	<p>highway operation, such as gorse, broom, etc. are termed as pests under each of the regional pest management strategies (RPMS's).</p> <p><i>It is important that the RPMS's are not solely focused on agricultural pests.</i></p>
Pest Management Levy	<p>NZTA has agreed to pay a levy for the administration of RPMS on the basis of the land NZTA occupies within a region. This proportion is to be calculated on the basis of three hectares of land per kilometre of road.</p>
Beneficiaries and Exacerbators in RPMS's	<p>NZTA does not consider itself to be either a beneficiary or an exacerbator of plant pests, and does not therefore accept responsibility for plant pest control, where:</p> <ul style="list-style-type: none"> • the adjacent land is not clear of plant pests and the landowner is not undertaking pest control; and • access to the subject site is via that property.
Backlog of Pests	<p>NZTA does not consider that it should fund the clearance of any backlog of pests that should have been controlled previously by the adjacent landowner. In this situation NZTA advocates that the responsibility for clearance of the backlog remains with the owner of the adjacent land or is undertaken by the relevant regional council or territorial authority or that a levy is imposed on the owner of the adjacent land to pay NZTA to clear the backlog of pests.</p>
Area Controls for Unwanted Organisms	<p>The Ministry of Primary Industries has been considering their responsibilities to manage the possible incursion of an unwanted organism, such as foot and mouth disease, and their rights to put in place area controls and to set up cordons and road blocks. Their mechanisms to put these in place are cumbersome and time consuming as they must apply to the courts for permission. It is expected that given the likely economic impacts the Government would require that any such need for control would be supported by all other departments and agencies as necessary. The NZTA has these powers already in place for its roads and will co-operate with any reasonable request for temporary road closures and to provide resources where possible to man cordons. Such requests may come from either the Ministry or the Police and should be given the utmost support with urgency and should be treated as any other emergency response. Note that the Act does give the Ministry the right to direct persons to take appropriate actions, but it should not be necessary for them to invoke such powers.</p>

Civil Defence and Emergency Management Act, 2002

Introduction

The NZTA is a lifeline utility as defined in this Act and must make a proactive response to its duties in emergency management. NZTA's approach is to activate in accordance with its emergency management framework and for its System Management team to initiate a State highway management response in accordance with the SDD Emergency Response Plan.

Duties Under the CDEM Act

The duties the NZTA must undertake are set out in s.60 of the CDEM Act:

- a. ensure that it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency;
- b. make available to the Director in writing, on request, its plan for functioning during and after an emergency;
- c. participate in the development of the national civil defence emergency management strategy and civil defence emergency management plans;
- d. provide, free of charge, any technical advice to any Civil Defence Emergency Management Group or the Director that may be reasonably required by that Group or the Director;
- e. ensure that any information that is disclosed to the lifeline utility is used by the lifeline utility, or disclosed to another person, only for the purposes of this Act.

Additionally, the NZTA may be asked to provide direct advice to Government via the Ministry of Transport due to its unique position of Government agency and on-the-ground roading manager.

Target

The immediate focus is to maximise the network of State highways available to aid the response effort as soon after the event commences as possible and to prioritise and initiate the State highway restoration for those parts of the network not immediately useable.

Response

The NZTA is different from most lifeline utilities in that it is part of the Transport Cluster. At a National level the NZTA is expected to provide support to the emergency response via the Ministry of Transport and its Transport Response Team.

Major Events Management Act, 2007

Introduction

The NZTA is not directly responsible for using or managing this legislation but is affected by the responsibilities that others may take on pertaining to State highways.

Clean Zones and Clean Routes

This Act is administered by the Ministry of Economic Development and under this Act its Minister may declare clean routes and clean zones pertinent to specific major events and the specific venues involved. State highways are affected if they are to access or are within close proximity of the event venue.

The purpose of the declaration is to prevent street trading and illicit advertising that may impact on the hosting agreement for the event. The declaration gives the Ministry and its agents the rights to remove street traders and illicit advertising from the immediate area and approaches to an event venue.

Target

The NZTA may be asked to assist the Ministry of Business, Innovation and Employment or its agents (generally local authorities) to help with these activities. In particular the NZTA may be specifically asked to assist where traffic management and/or specific lifting equipment is necessary to remove the particular items. This is because there are no issues with NZTA or its agents working on the State highways where others have increased liabilities.

Response

The NZTA is expected to provide support and assistance as necessary.

Delegations of Powers and Functions

Purpose

This section specifies a comprehensive list of operational delegations for the effective management of State highways.

In this part

This part contains the following sections:

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General Conditions of Delegation to NZTA Staff

Purpose of delegation

The purpose of delegation is to provide operational authority to manage the State highways.

The emphasis on delegation is to give it to an appropriate level commensurate with the activity being undertaken.

Infrastructure that supports delegations such as policy and procedures, documentation and guidelines must be in place.

Authority to delegate

Schedule 4 of the Land Transport Management Act 2003 outlines the key provisions about governance and operation of the NZTA Board and its employees.

Clauses 20 to 22 of Schedule 4 specify the Board's power to delegate.

General conditions applicable to all staff delegations

The following general conditions shall apply:

1. The Board may delegate any of its functions and powers to NZTA staff.
 2. Expenditure impacts which are a consequence of actions taken under delegation must be contained within the approved budgets for the relevant financial year.
 3. Any further delegation required in terms of Clause 20 of Schedule 4 must be:
 - a. made in writing on a standard instrument of delegation; and
 - b. have the prior approval of the Chief Executive of NZTA (CE).
 4. Compliance with any or all conditions attached to the delegation is the specific responsibility of the holder of the delegation.
 5. Delegation with respect to any permanent traffic restriction (speed restriction, parking, etc.) shall only be exercised after the Regulatory Group, TLA, NZ Police, AA and, where appropriate, the RTF have been consulted and their views considered.
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Delegation Principles and Delegates

The principles of delegation are contained in subsections 1-13 of the NZTA Corporate Services Manual. The list of approved delegations may be viewed on-line via intranet.

Absence of Managers, System Management

Any delegation to a Manager, System Management will also apply to the officer given specific delegation in the absence of a Manager, System Management.

Guidelines for Delegation of Functions to Territorial Authorities

Overview

The powers for NZTA to delegate all or any functions, duties, powers of construction, maintenance and control conferred on NZTA in relation to State highways are set out in Schedule A of the Land Transport Management Act 2003 (LTMA) and s62 of the GRP Act.

Section 66 of the GRP Act gives NZTA full power of control over State highway policy.

Activities capable of delegation

Section 25 of the LTMA requires all expenditure, other than projects of administration, to be subject to procurement procedures with the aim of delivering best value for money.

This means that only projects of administration can be delegated to TLA in respect of State highways, (asset management).

Suggested activities capable of delegation

The State Highway Management Activities table in Appendix 1A gives guidance on which activities can be delegated.

All State highway professional services not identified as administration activities must be contracted out in accordance with the *Contract Procedures Manual*, NZTA.

Procedure for considering and approving delegations

The Chief Executive only may approve delegations of the Board's functions, duties and powers to local authorities.

Flow Chart 1.1 shows the steps to be followed in regard to an application for delegation of State highway functions to a TLA.

Capability profile

The request for delegation should be accompanied by a capability profile which has been completed in accordance with the capability evaluation on pages 46 to 49 below.

Agreement

Where it is resolved to delegate administration activities to a TLA, a formal agreement shall be executed. Appendix 1C gives the wording of such an agreement. The draft agreement is to be reviewed by the General Manager, System Design & Delivery before it is signed by the TLA and forwarded for signing by the NZTA.

Basis for payment for TLA costs

The NZTA will pay the TLA an administration fee calculated in accordance with Schedule II of the *Delegation Agreement* on pages 45 to 50 below. Costs are unlikely to be agreed at a level higher than \$200 per kilometre plus 1% of expenditure. There may, however, be circumstances where either the low cost of work or the high intensity of activity on a short length, make a different basis of payment appropriate. This will require case by case consideration.

Payment to TLA's for Minor Delegations

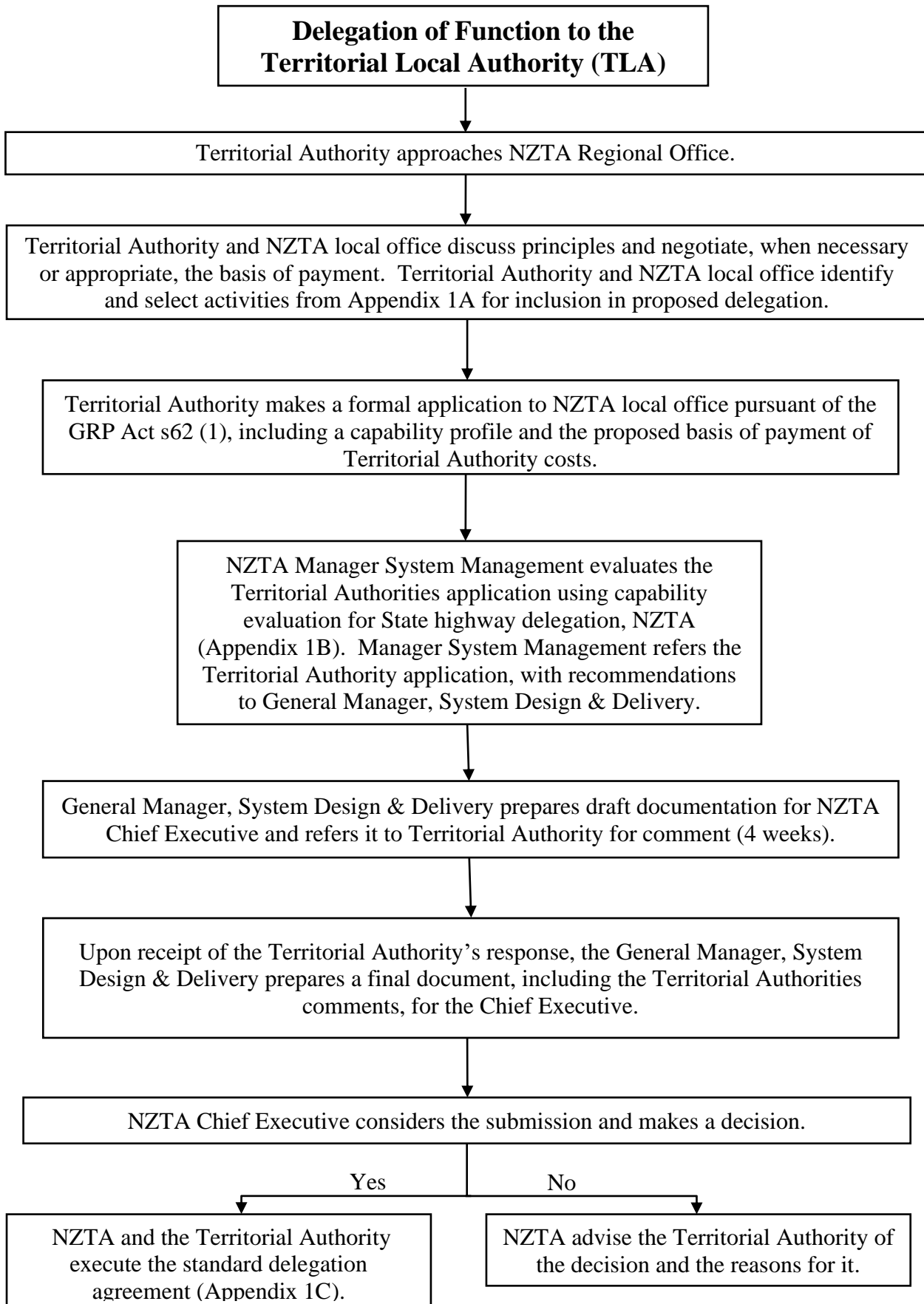
When TLA's seek from NZTA payment of administration fees associated with minor delegations on state highways each case must be assessed in terms of the following factors:

- the TLA's assessment of the additional costs of assuming the delegation;
 - NZTA's assessment of the benefits of the functions being delegated;
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- the benefits if any to the TLA; and
 - the delegation must realise cost savings to NZTA.
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Current Delegations

The change of organisations effected by legislation in the Land Transport Management Amendment Act 2008 did not provide for any transitional arrangements for previous delegations made to local authorities. The consequence of this is that all existing arrangements ended at the establishment date of the NZTA. Only delegations that have subsequently been approved have any validity.



Flowchart 1.1

Planning, Designations, Operational Board and Bylaw Restrictions

Overview

NZTA has a number of ways of achieving its purpose and objectives in relation to the State highway network. These include:

1. The promotion of policies in district plans consistent with roading and community needs.
2. Designation and purchase of land to enable alignment improvements or capacity expansion.
3. Statutory provisions of limited access control.
4. Bylaw provisions to manage the activities of some highway users.
5. Other statutory control measures such as temporary speed restrictions, road closures etc.

Responsibility

The Board, Chief Executive and Managers in Transport Services all have responsibilities to be pro-active and reactive to controls on State highways.

Topics covered in this section

This section contains the following topics:

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Planning Under the Resource Management Act

Overview

The RMA (pages 11 and 12 above) has significant implications for management and enhancement of the roading network throughout New Zealand.

It obliges councils, through their district plans or other planning instruments, to ensure that the adverse effects caused by the roading network are mitigated, remedied or avoided.

Importance of planning

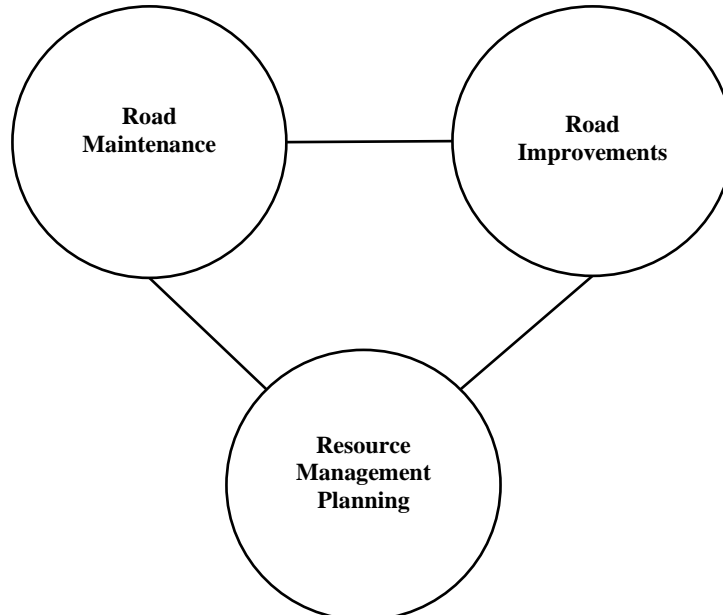
NZTA's resource management planning role is part of an overall NZTA philosophy of efficiently and appropriately using all available tools for State highway management. State highway management is a vital component of resource management planning.

There is a risk of undervaluing the opportunity for effective and efficient strategic management of the State highway network. The risk arises from perceived difficulties with the resource management planning component. These difficulties may result in a sense of can't do it.

For this reason, NZTA is committed to allocating sufficient resources to planning as an integral component of its highway management philosophy. NZTA recognises that without appropriate investment and integration the overall management of the road resource will suffer.

Planning elements

The State highway network is a significant physical resource. To be effective, NZTA's management of this resource integrates the following components:



A safe, efficient and sustainable State highway network cannot be attained when one element is considered in isolation from the others.

Definition of planning elements

The following definitions of planning elements are used in the context of planning under the RMA.

1. *Road maintenance*: normal care of the existing facilities excluding improvements;
-

-
2. *Road improvements*: construction and safety projects;
 3. *Resource management planning*: limiting the adverse effects of activities which affect roads so that maintenance is effective and efficient, and the need for road improvements minimised.
-

Highway management philosophy

The management philosophy of State highways will involve the following:

1. Recognition of the need for environmental sensitivity.
 2. Recognition of the planning and environmental context of the road.
 3. Sustainable management.
 4. Doing the right thing at the right time.
-

NZTA response

This philosophy will be supported by NZTA through the following response:

1. Establishing partnerships with local authorities to ensure the purposes of the GRP Act, the LTMA and the RMA are realised.
 2. Promoting policies and actions that avoid or limit the adverse effects of adjacent land use activities on the road resource.
 3. Fully utilising the procedures of the RMA to achieve its objective.
 4. Allocating sufficient resources to each component.
-

Outcomes

The outcomes of this response are consistent with NZTA's overall management philosophy which includes:

1. Promoting bold and innovative solutions to problems.
 2. Encouraging consultation.
 3. Optimising flexibility.
 4. Allocating available funds in the best interests of all road users.
-

Implementation

Implementation of this philosophy requires Managers, System Management to take the following actions:

1. Prepare Corridor Management Plans which include:
 - a. proper recognition of the role of resource management planning, and
 - b. identification of opportunities for taking a pro-active stance in relation to land use activities and effects on roads.
 2. Incorporate the provisions of the NZTA Planning Policy Manual in district plans.
 3. Actively participate in the preparation of Regional Policy Statements and Regional Plans to achieve proper recognition of NZTA's interests.
 4. Actively evaluate peripheral development proposals against:
 - a. the PPM,
 - b. Corridor Management Plans,
 - c. Regional Land Transport Strategy, and
-

-
- d. Regional/district plans and policies;
 - e. and take appropriate action.
5. Use of the submission, appeal, abatement or enforcement provisions when appropriate with the approval of the Senior Manager System Design, following consultation with the Senior Manager Legal.
-

**Planning Practice
Guidelines**

NZTA has developed a compendium *best practice* for the use of NZTA and its consultants involved in planning and resource management activities, called the *Planning Practice Guidelines Manual* (PPGM)

Limited Access Road (LAR) Control

Purpose

NZTA policies on access management are contained in the *Planning Policy Manual (PPM)*. The declaration of State highways as Limited Access Roads is an access management tool available for contributing to the control of the interface between the road and adjacent land in a way that protects the utility and amenity of both. By reducing or controlling access to arterial roads and influencing development along the road margins, the detrimental effects on the efficiency and safety of the road for road users will be minimised.

Statutory Authority

The statutory authority for the creation and revocation of LARs is contained in the GRP Act s88 to s98.

Responsibility

System Managers are responsible for initiating declaration proposals, provided the lengths proposed are in accordance with the following:

- This Manual; and
 - the annual national priority listing of State highway lengths for declaration as established by the process outlined in the Planning Practice Guidelines Manual.
-

Procedure to be followed

The procedures to be followed are as follows:

- for prioritisation of lengths for declaration refer to the *Planning Practice Guidelines Manual*
 - for initiating declarations, management and revocation of LARs refer to the appropriate generic Project Quality Plan. **The criteria for legal descriptions for New Zealand Gazette notices are given in *Legal Descriptions for Gazette Notices* on page 62.**
 - each region is required to include its priority listing of length for declaration in the annual plan and business plan as appropriate.
-

Bylaws

Purpose

Bylaws are used to regulate the activities of road users on State highways.

Authority to make bylaws

The Litter Act s12 and the Land Transport Act s22AB, authorise the Board to make bylaws with respect to any State highway. The GRP Act allows for bylaws to be made on the subject matters referred to in s22AB of the Land Transport Act 1998 (LTA).

Wherever possible, bylaws should be made under the GRP Act.

The Board may give delegation to TLA's to use NZTA bylaws or the TLA's own bylaws on State highways (subject to those bylaws being of such content that the NZTA may itself have made them). Such delegations require a delegation agreement: see pages 43 to 47.

To be effective, bylaws must be made with the proper authority. All bylaws must be published in the *New Zealand Gazette* and cannot come into force until 28 days after the date of publication.

Delegation to approve new State highway bylaws is held by the General Manager Transport Services. Recommendations on new bylaws will be made to the General Manager by the National Manager Programming and Standards.

Existing bylaws

All the changes in legislation have allowed for existing bylaws to be carried over.

Full copies of current NZTA bylaws listed below are available for reference on the NZTA Website via the Highways Information Portal. The subject matters of the bylaws include;

- Control of Stock
- One Way Roads
- Speed
- No Stopping/Parking
- Use of Chains
- Fishing from Bridges
- Signs on State Highways
- Car Sales on State Highways
- Roadside Vendors
- Use of Tunnels
- Use of Bus Lanes
- Heavy Vehicle Use

Hard copies of all historic and current bylaws can be obtained from any office of NZTA except that the amended schedules for parking and stopping and for speed limits are held only in the Wellington offices.

Review of bylaws

The following requirements are expected by the General Manager Transport Services to be met to support any changes being made to (a) Speed Limits and

(b) No Stopping/Parking Restrictions.

This formal approval mechanism then initiates the action to create an amendment bylaw.

(a) Speed Limits

- The Speed Limit register is available as read-only on the NZTA database.
- A hard copy schedule of the consolidation Bylaw and any amendments are available through local NZTA offices.
- When changes are required, the Region shall follow the process set out in the Setting of speeds Rule and notify the Lead Safety Adviser with the relevant details.
- The delegation for approving speed limits amendment bylaws is currently held by the National Manager Programme & Standards who will expect the the Lead Adviser Safety to provide an overview of the process.
- Once approval is given, the bylaw is published in the New Zealand Gazette and comes into effect 28 days after the publication date.
- The Wellington Office is responsible for the maintaining the schedule up to date.
- This register must be available to the public on request.

(b) No Stopping/Parking

- When regional bylaws are to be updated, the local office shall provide the Wellington Office with the amending bylaw and schedule amendments.
- The delegation for approving parking and stopping amendment bylaws is currently held by the National Manager Programme & Standards who will expect the the Lead Adviser Safety to provide an overview of the process.
- Once approval is given, the bylaw is published in the New Zealand Gazette and comes into effect 28 days after the publication date.
- Following the approval, the local office will implement the restriction(s) in the field (consistent with the date specified in the amendment bylaw).
- The information associated with this bylaw is held and updated by each of the respective NZTA Offices.
- This register must be available to the public on request.
- The original bylaw and its subsequent amendments will be consolidated on a bi-annual basis.

Other subject bylaws will be reviewed as and when required.

Other Statutory Controls

Purpose	<p>Situations often arise where action is required to meet an immediate situation. Provision is made in various regulations for prompt action to be initiated without the need for a bylaw or more formal control measures.</p>
Temporary traffic control	<p>The requirements for temporary traffic control and temporary speed limits are contained in the NZTA manual “Code of Practice for Temporary Traffic Management”.</p>
Traction Engine permits	<p>The National Manager Maintenance and Operations or the National Manager System Design may issue permits under Clauses 1 and 2 of regulation 10 of HMV Regulations 1974.</p> <p>Guidance for the issuing of a permit is contained in the <i>Overweight Permit Manual</i>, NZTA.</p>
Emergency prohibition of heavy motor vehicles	<p>The National Manager Maintenance and Operations or the National Manager System Design are authorised to prohibit heavy motor vehicles from using State highways in terms of regulation 10(4) of the HMV Regulation 1974.</p> <p>This power must be used sparingly and only to prevent extraordinary damage to the highway, as a result of an emergency resulting from climatic conditions or other unusual circumstances, as referred to in regulation 10(5) of the HMV Regulations 1974.</p> <p>All cases where this regulation is invoked are to be reported to the General Manager Transport Services, for information.</p>
Road construction zones	<p>Regional Managers, System Managers or Alliance Manager (WTA) are authorised to declare Road Construction Zones on State highways in accordance with regulation 12 of the HMV Regulations 1974.</p> <p>The zone can be applied to construction or maintenance works. The purpose of such a notice is to be able to run special or non-standard vehicles on the whole or part of a section of the highway being reconstructed. It is not intended that it should allow overloading of vehicles beyond the manufacturers’ recommended limits as this may be detrimental to vehicle safety. The specific types and particular limits of these vehicles must be stated on the notice.</p> <p>The boundaries of any road construction zone shall not extend beyond the specific section of road under construction but may be of lesser length. The length of the zone should only be that part of the site for which any resultant damage from these vehicles will not be critical in the future management of the highway. The limitations on access within the zone for all or any particular type(s) of vehicles must be stated on the notice.</p> <p>The construction zone will also need to apply when the particular vehicles are being used on any haul road within the road reserve, even if the carriageway itself is not utilised.</p> <p>The Regulations require that a copy of the notice (and any amendment to it) is lodged with the Agency. This requirement is to advise a change in allowed vehicle standards on a road and therefore a copy of any State highway notice must be sent to the appropriate officer in Access and Use Group within the</p>

	<p>Agency.</p> <p>NZ Police (CVIU) is also to be advised of all construction zones and be sent a signed copy of the notice. The CVIU may also be consulted if there are concerns about the vehicles requested to be included in the notice.</p>
Over- dimensional loads on State highways	<p>Permits for over-dimensional loads are issued by the Agency's Over-dimension Permit Issuing Agency (OPIA).</p> <p>For motorways, comment must be given by the System Managers.</p> <p>Broad guidelines for over-dimension permit issuing are contained in Section 1 of the <i>Overweight Permit Manual</i>, NZTA.</p>
School patrols	<p>Senior Safety Engineers are authorised to grant permission in terms of the Traffic Control Devices Rule 2004 to the Board of Trustees of any school to establish a school patrol at any specified pedestrian crossing or school crossing point on State highways where the speed limit does not exceed 50 km/h, subject to agreement by the local Police Youth Education Officer. All school-patrolled pedestrian crossings and school crossing points on State highways where the speed limit exceeds 50 km/h must be approved by the National Manager System Design.</p>
Control of damage and nuisance	<p>National Manager Maintenance and Operations are authorised under s51 of the GRP Act to grant permission and set conditions for activities which would otherwise be unlawful and seek Court action in respect of offences.</p>
Drainage works	<p>System Managers and the Alliance Manager (WTA) are authorised under the GRP Act s61 to construct or maintain on-road drainage facilities necessary for the safe operation of State highways.</p> <p>Where entry is required onto private land to effect drainage works under s61(4)(j) and to clear culverts under s61(4)(m) of the GRP Act, approval is the responsibility of either the National Manager Maintenance and Operations or the National Manager Infrastructure Delivery.</p>
Special motor vehicle crossings	<p>Regulation 2A of the Motor Vehicle Registration and Licensing Regulations includes a category of motor vehicles exempt from payment of registration and annual licence fee. A written deed of grant is required specifying the type of vehicle, crossing points or sections of highway to be used. The deed shall include provisions to make good damage and to operate traffic control devices on the highway.</p> <p>Details of the deed of grant required to be completed are available in the <i>Consolidated Heavy Motor Vehicles Sections</i> pages 4 and 5.</p> <p>All such proposals require the approval of the Board.</p>
Banners on State Highways	<p>System Managers and the Alliance Manager (WTA) are authorised to approve the placing of banners over State Highways to advertise events of widespread local interest. The requirements for approving banners are outlined in NZTA Bylaw 2003/13.</p>
Freedom Camping Act	<p>This Act only applies to land controlled or managed by territorial local authorities and so it is not considered that this either applies to State highways or can be delegated to local authorities. In particular the Act gives powers to local authorities to set wide-ranging controls on camping on public land.</p>

However, since it is generally held that local authority bylaws do not apply to State highways as they do not have powers of control, it is not expected that their bylaws apply in this case either so must not refer to State highways. It is possible that any such reference could render the bylaw invalid.

Removal of Abandoned Vehicles

Overview

The Local Government Amendment Act (No 6) 1992 deals with procedures for dealing with abandoned vehicles. This is distinct from vehicles unnecessarily blocking roads or impeding traffic flows and is dealt with by Police in terms of the Traffic Regulations.

Under the Act, NZTA is deemed to be a local authority in respect of State highways under its control. System Managers and Alliance Manager (WTA) may exercise this authority.

What is an abandoned vehicle?

The law does not spell out just when a vehicle has become abandoned. System Managers and Alliance Manager (WTA) must use their judgement in this matter.

Classes of abandoned vehicles

There are three categories of abandoned vehicle:

Category	Description
A	Those with neither number plate nor licence label.
B	Those with either a number plate or a current licence label, but not both.
C	Those with a number plate and either <ul style="list-style-type: none">a current licence label, ora label that has been expired for not more than 6 months.

Notify the Police

The NZ Police must be advised of all vehicles deemed abandoned and NZTA's intention to remove them.

Storage requirements

The following storage requirements apply:

Category	Storage Requirements
A & B	Store until reasonable efforts to identify and locate the owner have been completed.
C	One-month storage while reasonable efforts are made to identify and locate the owner.

Identify and locate the owner

The following minimum procedures shall apply:

Category	Minimum Reasonable Efforts
A, B, & C	Use the chassis and other vehicle identification numbers to

	identify and locate the owner.
B & C	Contact the Transport Registry Centre of NZTA, who maintain the motor vehicle register, on 0800 108 809.

Registered security interest

If a search within the Transport Registry Centre shows the vehicle is subject to a registered security interest, then the holder of the interest must be notified of the intention to sell or dispose of the vehicle.

Newspaper notice

A notice of intention to dispose of or sell the vehicle if unclaimed after 10 days must be given. The notice must be published in two issues of a daily newspaper circulating in the district in which the road from where the vehicle had been abandoned is situated.

The notice may be dispensed with if the vehicle is of little or no value.

The notice must include:

2. Vehicle description, make, model, colour.
6. Chassis number and any other identifying numbers (if known).
7. Location from which the vehicle was removed.
8. For category C vehicles, the name of the current registered owner and their last known address.

Disposal of the vehicle

If the vehicle owner does not reclaim the vehicle the vehicle may be sold or otherwise disposed of.

A set of photographs of the vehicle may be useful particularly if the owner does not respond or cannot be located.

The proceeds of the sale may be used to pay for the removal and storage of the vehicle, the newspaper notice and costs of selling the vehicle.

Money left over must be paid to the owner (if known).

If the former owner is not known the money may be retained.

Owner reclaims vehicle

The owner must pay all removal and storage expenses before the vehicle is returned.

Delegation of Administration Functions to Territorial Authorities

In this Section

This section shows which administration activities are retained by NZTA and which may be delegated. In some cases, a portion of the activity may be delegated. This is shown by a tick in both right-hand columns.

Delegation of Administration Functions to Territorial Authorities

Activity	Short Title	Description	Retained by NZTA	Can be delegated
PLANNING	Corridor Management Plans	Initiate and monitor preparation of Corridor Management Plans and strategies for SH future needs.	✓	
	Resource Management	Undertake all activities under Resource Management Act to protect S H facility including submissions, objections and requirements. Review needs of district plans at pre-review and review stages - initiate strategic planning or problem definition.	✓	
	Hearings	Individual hearing activities for objections and appeals including preparation, collection of data, and attendance at hearings.	✓	
ACCESS CONTROL	LAR Declaration and Revocations	Strategic management of LAR.	✓	
	LAR Crossing Place Licences	Manage existing LAR crossing place licences.	✓	
	Sub-divisions and Roadside Development	Review of and submissions on subdivisions. Response to queries on roadside development.	✓	
LICENCES AND AGREEMENTS	S H Licences and Agreements	Includes all action involved with encroachment agreements, fencing agreements, and public & private utility activities.		✓

Activity	Short Title	Description	Retained by NZTA	Can be delegated
SAFETY AND CAPACITY	Accident Reporting Routine	Advise Consultant of fatal accident reports. Implement or brief consultancy on any problem-solving action. Review fatal accident sites to highlight any deficiencies and report to RM. Respond to MOT and public. Collate and submit oversee accident report forms. Advise on accident black spots as requested.		✓
	Accident Studies	Set up/participate/review specific accident studies. Participate in accident studies as briefed including any review or follow-up action.		✓
	Traffic Management	Advice/briefing on general traffic management matters signposting, traffic control devices, markers, markings including submissions to National Office on regulatory functions.		✓
	Bridge Inspection Assessment and Posting	Brief for programme of inspection and action reports as appropriate. Brief for assessment and posting as necessary.		✓
RECORDS	Plans	Management of NZTA Plans.	✓	✓
	Inventory	Non-specific inventories.	✓	✓
	Highway Information Sheets	Briefing only.	✓	✓
	Bridge Description and Structural Inventories	Action requests and advice to and from National Office as necessary. Brief for inventory update.	✓	✓
	RAMM	Implement and manage RAMM database.	✓	✓
	Photography	Maintain aerial photo set.	✓	✓

Activity	Short Title	Description	Retained by NZTA	Can be delegated
	Pavement Condition Surveys	Brief and manage in accordance with policy.		✓
	Roughometer Surveys	As specifically briefed.	✓	
	Traffic Surveys	As specifically briefed.		✓
	Traffic Counting	Brief for District Counting Programme. Arrange maintenance of counters. Process data and analysis. (In-house in some regions.)	✓	✓
PROJECTS AND PROGRAMMES	General	Excludes office administration and management. Productive work only: general correspondence replies, statistical returns, S H declarations, S H revocations. Ensuring policy instructions are disseminated. Co-ordination of emergency reports and follow-up action.	✓	✓
	Briefing	Preparation and monitoring of consultant briefs. Includes reporting phases and reviewing for all work on state highways.	✓	✓
	Approving	Reviewing consultant recommendations, initiating changes through re-briefing. Submissions to National Office. Action all local approvals and all follow-up.	✓	✓
	Approving Documents	Approving documentation principally on basis of consultant certification.	✓	✓
	Approving Payments	Approving all claims, invoices, contract payments as meeting NZTA requirements.	✓	✓
	Tenders Board	Operating tenders board, internal controls and related contract management tasks.	✓	✓

Activity	Short Title	Description	Retained by NZTA	Can be delegated
	NLTP Budgeting, including: <ul style="list-style-type: none"> • Forecast • Review • Reconciliation • Transfers • Project Commissioning 	State Highways Programming <ul style="list-style-type: none"> • Review consultant reports; • Verify needs; • Follow up with consultant or LA as necessary; • Assemble documentation for reviews and forecasts; • Prepare State Highway Statement of Service Performance; • Vet submissions from consultant, complete follow up action and prepare submissions to head office where necessary. 	✓	
	S H Financial and Progress Reports	Review monthly reports from consultants with follow up action to consultant and National Office. Convene consultant/client, action meetings together with associated follow-up. Manage overall works and fees programmes to maximise investment effectiveness within policy and budget. (Effectively all S H budgeting not included in preceding item)	✓	✓
OVERWEIGHT AND OVER-DIMENSION LOADS	Process Permits	All permit actions within the region including general enquiries and advice to operators on possible permits.	✓	✓
	Supervision	Generally briefing only.		✓
	Advise MOT on over-dimensions	Advice on movement of over-dimensions.		✓
INSPECTIONS	Advise Industry	Detailed technical enquiries and advice to industry.	✓	✓

Activity	Short Title	Description	Retained by NZTA	Can be delegated
	Inspections	General State highway inspections not specifically reported.	✓	
	Programme Development Inspection	Inspections with consultant in relation to programme development and project evaluation approval.	✓	✓
	Work Assessment/Audit	Internal Highway & Network Operations Group inspection of level of service, handover of projects and value for money, maintenance spot checks.	✓	

Capability Evaluation for State Highway Delegation

In this Section

This section summarises the criteria to be considered in evaluating an application from a territorial authority for NZTA to provide delegated powers.

Capability Evaluation for State Highway Delegation

Delegated Activity ⁽¹⁾	Experience	Track Record	Technical Skills	Management Skill
Licences and Agreements	<ul style="list-style-type: none"> • Systematic approvals with a policy framework 	<ul style="list-style-type: none"> • Competent administration • Timely responses to basic administration enquiries 	<ul style="list-style-type: none"> • Basic understanding of roading operations 	<ul style="list-style-type: none"> • Management of external vested interests • Handling of difficult customers without public outcry • Systems in place for information management on similar issues
Safety Management (excluding bridging)	<ul style="list-style-type: none"> • Hands-on safety management • Appropriate computer/information systems • Involvement and accountability for each subcomponent to be delegated 	<ul style="list-style-type: none"> • Recognised competence for administration of any activity proposed for delegation 	<ul style="list-style-type: none"> • Engineering qualification and/or experience to each subcomponent proposed for delegation 	<ul style="list-style-type: none"> • Demonstrated recognition of accuracy an essential dimension of management skills
Bridge Inspection Posting	<ul style="list-style-type: none"> • Commissioning appropriate resources for bridge management 	<ul style="list-style-type: none"> • Timely delivery of routine reports 	<ul style="list-style-type: none"> • Experience/qualification in bridge maintenance/construction at similar scale and complexity to that proposed for delegation 	<ul style="list-style-type: none"> • Systematic approach to timely completion of routine tasks

Delegated Activity ⁽¹⁾	Experience	Track Record	Technical Skills	Management Skill
Records and Databases	<ul style="list-style-type: none"> Hands-on experience with records of similar type and strategic importance 	<ul style="list-style-type: none"> Records have demonstrable integrity 	<ul style="list-style-type: none"> Relevant information management and computer systems capability 	<ul style="list-style-type: none"> Demonstrable commitment to quality systems in support of database management
Project and Programme Management	<ul style="list-style-type: none"> Hands-on briefing, bid evaluation, commissioning and managing consultants for roading projects of similar scale Experience with relevant conditions of engagement and contract administration procedure Current capability and ability to accommodate level of activity required to manage projects/ programme proposed for delegation Experience with implementation procedure of communications strategies in relation to comparable activities 	<ul style="list-style-type: none"> Recognised project management expertise for projects similar in scale and type Experience with the client/ consultant/ contractor relationship adopted by NZTA Competent timing of project reporting for both achievement and expenditure Evidence of commitment to consultation Timely correct financial assistance claims 	<ul style="list-style-type: none"> Technical competence needed for credible status as client in relation to projects or programme proposed for delegation No material concerns in audits of projects or programmes of similar complexity/ scale Access to experienced communication skills Ability to manage timely relevant records particularly in relation to performance 	<ul style="list-style-type: none"> Demonstrated capability for establishing and operating management systems for reporting and monitoring both financial and physical progress of projects or programmes of similar integrity to those required by NZTA Stable management systems sufficiently robust to accommodate increased level of activity proposed. Management skills necessary to operate as client well developed Cashflow management systems which can cope with payment without fiscal consequences
Programme management (financial/ admin servicer)	<ul style="list-style-type: none"> Management of similar cash flows 	<ul style="list-style-type: none"> Demonstrated ability to manage land transport disbursement account 		

- (1) Refers to list of delegable activities on pages 37 to 41 above.
- (2) Extent of delegation will relate to assessed capability and there will be no delegation of project management where RMA action is substantive.

Delegation Agreement between the New Zealand Transport Agency and a Territorial Authority

In this Section

This section gives the wording for a formal agreement between NZTA and a territorial authority, where NZTA has resolved to delegate administration activities to the territorial authority.

DELEGATION AGREEMENT

THIS AGREEMENT is made the _____ day of _____

BETWEEN NEW ZEALAND TRANSPORT AGENCY, a body corporate pursuant to the Land Transport Management Amendment Act 2008 ("NZTA")

AND [_____] a territorial authority within the meaning of the Local Government Act 2002 ("the Territorial Authority").

RECITALS

- A. The Territorial Authority wishes to exercise various of the functions, duties and powers of NZTA with respect to State highway.
- B. The Territorial Authority has requested NZTA to delegate those functions, duties and powers pursuant to section 62(1) of the Government Roadway Powers Act.
- C. NZTA has determined that the delegation will not result in an increased cost to the Account.
- D. NZTA considers that the Territorial Authority has the resources and capacity to exercise the delegation.
- E. The functions, duties and powers have not been delegated to any other territorial authority and NZTA is satisfied they ought not to be so delegated.
- F. NZTA has, [either by decision of the System Manager or Alliance Manager (WTA) or by resolution of the Board], delegated to the Territorial Authority the functions, duties and powers set out below subject to the terms and conditions set out below.

AGREEMENT

- 1. Extent of Delegation: Conditions are set out hereunder and in the attached Schedule I ("the delegation").
- 2. Acceptance: The Territorial Authority consents to the delegation.
- 3. Exclusive Exercise of Powers: NZTA shall not have the power to exercise any of the powers so delegated during the period of the delegation.
- 4. State Highway Policy: Notwithstanding the delegation, NZTA retains the full power and control over State highway policy and the Territorial Authority shall comply with such policy as is communicated to it by NZTA from time to time.

5. Payment: NZTA shall pay the whole of the cost of the construction and maintenance of the State highway which is the subject of the delegation, being the costs included in the state highway output of NZTA's component of the *National Land Transport Programme*, provided that if the Territorial Authority elects to undertake any work of construction or maintenance that is of a higher standard than the standard prescribed by NZTA or is in addition to the works required to be undertaken in order to comply with that standard, then NZTA shall only contribute such costs as are required to meet the prescribed standard and not for the above standard or extra work, if any, unless NZTA considers this to be value for money.
6. Administration Costs: In addition to the costs payable under clause 5, NZTA shall pay the Territorial Authority an administration fee calculated in accordance with Schedule II, provided that, if the Territorial Authority considers that any alteration in policy or other action of NZTA has resulted in an increase in the costs of the delegation, the Territorial Authority may seek an amendment to Schedule II to compensate it for additional costs. On receipt of a request for amendment, NZTA shall agree to such amendment to Schedule II as it considers reasonable.
7. Liability: The Territorial Authority shall exercise the delegated powers in its own name and shall be liable to third parties accordingly; and neither NZTA nor the Crown shall be answerable to any third party for any act or default of the Territorial Authority in the course of the delegation, provided that where any such act or default occurs in the normal course of the delegation and is not the result of any negligent or wilful act of the Territorial Authority, its employees or agents, then NZTA shall indemnify the Territorial Authority for the reasonable costs incurred as a result of the act or default, provided that the Territorial Authority shall notify NZTA as soon as practicable of any alleged act or default which may give rise to a claim by a third party.
8. Compliance with Legislation: In exercising the delegation the Territorial Authority shall comply with all relevant legislation.
9. Compliance with NZTA Manuals: In exercising the delegation the Territorial Authority shall comply with all relevant NZTA manuals being those manuals set out in Schedule III and any other manuals notified to the Territorial Authority by NZTA during the course of the delegation. Such manuals shall be provided to the Territorial Authority by NZTA on request and NZTA shall notify the Territorial Authority of any amendment it makes to the manuals.
10. Compliance with Procurement Procedures: In letting any contracts required under the delegation, the Territorial Authority shall comply with the relevant Procurement Procedures approved by NZTA in compliance with the Procurement Manual.
11. Reporting: The Territorial Authority shall report to NZTA by the tenth day of each month and at such other times on request from NZTA. The reports shall be in the form set out in the attached Schedule IV or in such other form as is notified to the Territorial Authority from time to time.
12. Guidance from NZTA: In exercising the delegation, the Territorial Authority may seek guidance from NZTA but any guidance provided by NZTA is provided on the basis that the Territorial Authority will not rely on such guidance but will take such professional and other advice as is appropriate in the circumstances and, in reaching any decision required to be made in the course of the delegation, will rely on its own skill and judgement.
13. Capability Assessment: In requesting the delegation, the Territorial Authority has provided NZTA with the capability assessment attached as Schedule V. Should any material factor (noted as such in the schedule) in the capability assessment change, the Territorial Authority shall notify NZTA in writing of the change within 7 days of such change together with any proposed action to alleviate any reduction in the Territorial Authority's capability arising from the change.

14. Review: NZTA shall review the delegation at three-yearly intervals, with the first review being three years from the date of this agreement. All reviews shall include consideration of the Territorial Authority's performance of the delegation, the resources and capacity of the Territorial Authority to continue to exercise the delegation and the costs to the Land Transport Account of the delegation.
15. Surrender by Territorial Authority: Should the Territorial Authority wish to surrender the delegation it shall give notice in writing to that effect not later than six months before the end of financial year of NZTA and such notice shall take effect on the commencement of the following financial year.
16. Revocation by NZTA: If following a review under clause 14, or at any other time NZTA considers that the delegation results in an increase in cost to the Land Transport Account, or that the Territorial Authority no longer has the resources and capacity to exercise the delegation, or that the delegation should be to some other territorial authority, then NZTA shall advise the Territorial Authority of any proposed action and invite comment. Following consideration of the Territorial Authority's comments NZTA may, by resolution of the Board, revoke or vary the delegation and such revocation or variation shall be notified as soon as possible to the Territorial Authority, and take effect, upon receipt of such notification.
17. Property: On the surrender or revocation of the delegation the Territorial Authority shall as soon as reasonably practical transfer and, if deliverable, deliver to NZTA all property (including, but not limited to, all real property and all intellectual property) obtained by it as a result of the delegation or created by it, its agents or employees, in the course of the delegation.
18. Notices: Any notice or request to be given under this Agreement shall be in writing addressed to the party to whom it is to be sent at the address or facsimile number from time to time designated by that party in writing to the other. Until a change is so notified the address and facsimile number of each party is as follows:

New Zealand Transport Agency:	Victoria Arcade 44 Victoria Street (Private Bag 6995) WELLINGTON Facsimile: 04 894 6146 Attention: National System Managers or Alliance Manager (WTA)
-------------------------------	---

Territorial Authority:

Attention:

THE COMMON SEAL of the)
NEW ZEALAND)
TRANSPORT AGENCY)
was hereunto affixed in)
the presence of:)

THE COMMON SEAL of)
_____)
was hereunto affixed in)
the presence of:)

Note: The schedule of administration functions as shown in Appendix 1A of this manual is to be attached as part of this Delegation Agreement.

SCHEDULE I

An example of special conditions specific to the agreement.

The following special conditions apply:

- I.1 The extent of delegation is defined as the current _____ District/City as depicted in Appendix .
- I.2 Projects shall be delegated for all phases at the discretion of the System Managers or Alliance Manager (WTA) on approval of the National Land Transport Programme. Once a project is delegated it will remain with council until completion.
- I.3 The Delegated territorial authority shall manage overall works and fees programmes to maximise investment effectiveness within policy and budget.
- I.4 Projects that require consents:
 - (a) All planning consents shall be lodged by the System Managers or Alliance Manager (WTA). Subsequent hearings shall be directed by the System Managers or Alliance Manager (WTA).
 - (b) All resource consents, and statutory applications that do not require design mitigation measures for environmental effects, and will not be notified shall be delegated to council.
 - (c) Land Purchase shall be recommended to the System Managers or Alliance Manager (WTA) for approval.
- I.5 Network control functions apply specifically to activities within road reserve except for the special conditions that apply to 50 km/h areas. Activities outside the road reserve shall be administered by the NZTA Regional Office and shall be a charge to Region ___ allocations.
- I.6 Information required by documents specified in Schedule III and reported through Schedule IV shall be supplied to the NZTA Regional Office 2 days in advance of the specified date.

SCHEDULE II

Method of calculation of administration fee, e.g.

- II.1 The annual administration fee payable shall comprise:
 - 1 \$150 per km, and

2 1% of the actual annual expenditure.

SCHEDULE III

III.1 NZTA *Standards and Guidelines Manual*.

SCHEDULE IV

Form of reports to the New Zealand Transport Agency, e.g.

IV All reporting required by NZTA's *Planning, Programme and Funding Manual* shall be assumed by the Delegated Territorial Authority for the delegated area and report to the nominated System Managers or Alliance Manager (WTA)'s Agent.

Further specific reporting is:

Accrued indebtedness on the SAP output.

SCHEDULE V

Capability assessment of territorial authority. Material factors (required notification of change) are to be noted, e.g.

V.1 The Capability assessment of the _____ District/City Council is included in Appendix B

BETWEEN

NEW ZEALAND TRANSPORT AGENCY

("NZTA")

AND

("the TERRITORIAL AUTHORITY")

DELEGATION AGREEMENT

Dated

20.....

State Highway Revocation: Policy and Guidance

Objective

The objective of this policy and guidance is to promote effective, consistent and timely decisions regarding revocation of state highways.

This document outlines requirements to be adhered to (“must”) and recommended practices (“should”) in the revocation decision-making process. It is important to note that the requirements are predominantly derived from legislative provisions and Waka Kotahi policies.

Scope

This policy and guidance applies to Waka Kotahi processes and decisions regarding revocation of state highways. Links to related policy and guidance can be found in the “Related information” section below as they are out of scope or contain more detail than is needed for the purposes of this document (e.g. legally stopping a road that is no longer required as a road).

Context

State highways help to facilitate the safe and efficient movement of people and goods throughout the entire length and breadth of the country. Waka Kotahi NZ Transport Agency (Waka Kotahi) is the Road Controlling Authority (RCA) for the state highway network and is therefore responsible for its planning, design, construction, maintenance and operation. The state highway network currently spans approximately 11,000 kilometres and is valued at over \$52 billion (as at 30 June 2020).

Section 103 of the Land Transport Management Act 2003 (LTMA) empowers Waka Kotahi, with the consent of the Secretary of Transport, to revoke a state highway (referred to as “revocation” for the purposes of this policy and guidance). A State highway is a road that is declared to be a State highway under section 11 of the National Roads Act 1953, section 60 of the Government Rounding Powers Act 1989, or under s103 of the Land Transport Management Act 2003. Revocation of a state highway constitutes the road as a “local road” for the purposes of the LTMA and any other legislation. This will in effect transfer ownership, control and funding responsibility of the road to the future RCA (or potentially multiple RCAs where the section of state highway to be revoked crosses council/jurisdictional boundaries).

The definition of road includes a street, motorway, footpaths, bridle paths, and any related structures (e.g. bridges) that form part of a road.

Revocation decisions are important for Waka Kotahi and future RCAs because, irrespective of ownership, there are ongoing financial implications for the operation and maintenance of a revoked state highway. There may also be upfront costs associated with revocation, which can in some cases be significant, to ensure that the revoked state highway is fit for its new purpose (e.g. the revoked state highway needs to accommodate slower speeds and align with the character of the particular township). In order to effectively consider, determine and implement revocation decisions, sufficient attention must be given to discussing it and making provision for its costs at the earliest opportunity - which is at the business case stage of the improvement project (i.e. the project that creates the need to revoke a state highway or a section of it). Situations may arise where revocation is not as a result of an improvement project or project funding has lapsed or closed out. In this instance a new business case pathway will need to be developed, starting from a Point of Entry and seeking of an appropriate funding mechanism.

But the implications of revocation extend beyond those of a financial nature. Tools such as Waka Kotahi’s intervention hierarchy, the One Network Framework (ONF) and Network Operating Framework, help to guide revocation decisions in respect of the future function of the road and opportunities that might better support the use of other modes of transport, achievement of outcomes for communities (e.g. improving the “place function” of the road through the town centre) and also supporting progress towards wider government objectives (e.g. contributing to New Zealand’s carbon zero objective).

Revocation is to be recognised and factored into the early stages of the improvement project

Indicative/optioneering phase and detailed business case stage of improvement project

Waka Kotahi *should* include, as part of the budget for the improvement project, provision for the key stages of revocation, namely consultation, investigation and ensuring the former state highway is fit for its new purpose at handover.

Waka Kotahi’s intervention hierarchy *should* be applied with all business cases associated with the improvement project and work to make the former state highway fit for its new purpose. This means that alternative and option selection should start with lowest cost alternatives and options, including making best use of existing transport capacity, before considering higher cost alternatives and options.

If the function of a road changes (e.g. from being a state highway with a primary movement purpose, to one that is more access focused), then the associated costs and timing implications of the change *should* be recognised and incorporated into the improvement project (or standalone revocation project).

During development of the business case for the improvement project, Waka Kotahi *should* work to agree with the future RCA on the condition of the road (including consideration of safety and whole of network implications) and timing for handover. The level of service for the road at handover *should* also be agreed during the development of the improvement project’s business case, and before work on a consenting or implementation design is started. These *should* be documented and incorporated within the overall project plan for the improvement project/revocation project.

Early planning for revocation decisions is important

The project plan *should* recognise the matters relevant to revocation as part of the business case process for the improvement project, but also activities needed to take the substantive decision and those activities relating to the handover of the road. Some of the key handover activities, which are separately discussed later in this document, include the following:

- agreeing fit for purpose standard for handover
 - physical works to make the road “fit for purpose”
 - review and, if applicable, remove Limited Access Road status
 - legalisation of road corridor
 - review and transfer of any Resource Management Act 1991 designations and resource consents
 - road naming and changes to property addresses
 - review, update (where required) and transfer of any third-party agreements
 - review, update (where required) and transfer of any bylaws or other controls;
-

and

- budgeting for ongoing maintenance of revoked state highway section.

The project plan *should* also identify appropriate expertise, and resourcing requirements for the activities needed to enable handover as well as identifying the key risks or uncertainties.

Importance of documenting the process and key decisions

Ongoing, clear and detailed documentation ensures:

- that Waka Kotahi is acting transparently
- continuity should the revocation timeline extend over several years
- the focus is kept on the areas to be resolved; and
- that matters that have been agreed are not revisited.

All key agreements with RCAs *should* be included within key project documentation such as a business case, Urban Design and Landscaping Framework, multi-party funding agreement and a Network Operating Plan before funding for implementation is confirmed.

Matters relevant to the substantive revocation decision

Consultation

Waka Kotahi must consult with the following stakeholders prior to taking any decision to revoke a state highway (see Sections 103(6) and (8) of the LTMA):

- any regional council or territorial authority that may be affected by the proposed revocation,
- the landholding trustee of land registered in the name of Pōtatau Te Wherowhero under section 19 of the Waikato Raupatu Claims Settlement Act 1995;
- iwi or hapū who may be affected;
- Auckland Council and Auckland Transport (if the road is in Auckland); and
- Kāinga Ora-Homes and Communities if the road is within a specified development project area.

Where Māori land or interests are potentially affected, specific advice and guidance should be sought from Te Mātangi in Waka Kotahi.

While it is mandatory to consult with the above list of stakeholders, Waka Kotahi *should* also carefully consider consulting with others, including owners of adjacent land, local communities and other departments that may have an interest (e.g. Heritage New Zealand, KiwiRail, Department of Conservation). Note that the Department of Conservation is also a road controlling authority for roads within national parks and reserves.

While Waka Kotahi must consult with stakeholders as part of its revocation decision process, it is *not required* to reach an agreement with them nor obtain their consent.

Adopt a whole of network approach to the decision

Waka Kotahi *should* adopt a strategic whole of network approach to its revocation decision. Consideration of the implications for all road users (e.g. cyclists, pedestrians, public transport users) is important.

Waka Kotahi *must* consider the revocation decision within the context of the

surrounding road hierarchy, surrounding land use, and multi-modal transport networks and use the ONF along with the Network Operating Framework for this purpose.

Decisions *should* be informed by local, regional and national plans and strategies.

Appropriate skills and expertise *should* be secured to understand and advise on these issues (e.g. relevant local authorities, other government agencies).

If the road is no longer required as a road it can be legally stopped.

Duplicate state highway routes are possible but should be avoided

Waka Kotahi *should* revoke state highways when changes to the state highway network result in duplicate sections of state highway that serve substantially the same function for the surrounding network.

Two parallel routes can exist if they provide two different state highway functions, and in such instances, state highway status for both may be appropriate. Where this is a consideration, Waka Kotahi *should* undertake an evaluation of a state highway's network function, subject to the revocation proposal and where a new road is to be constructed.

Matters relevant to an effective handover of the road

Ensuring the road is “fit for purpose” at handover

Waka Kotahi *must* ensure that the revoked road's transport function is fit for purpose at the time of handover. Fit for purpose means the revoked state highway section will provide a similar level of service to other roads with the same function in the local network and that the road is safe despite its change in function.

Wherever possible, Waka Kotahi *should* work jointly with the future RCA to identify the fit for purpose standard for the revoked section of state highway at the time of handover. The following approach *should* be undertaken:

- Identify the network function of the road (at the time of handover) based on the existing local road hierarchy and surrounding land use;
- Identify the level of service that will reasonably meet the network function of the road (e.g. from existing asset management plans, district plans, physical inspection and assessment of the surrounding network and land use); and
- Complete a safety assessment to ensure that the road will be safe at the time of handover and the change in function will not create a safety issue that did not previously exist.

Where agreement of the future RCA is not possible (including efforts to escalate to senior or executive management levels), Waka Kotahi *should* still use the criteria above to ensure that the revoked road is fit for purpose at the time of handover.

Any works to change the road beyond fit for purpose *must not* be funded by the primary project and so other funding sources should be investigated.

Resource consent and designation process for the state highway improvement project

Care is needed to ensure that any new designation or consent conditions associated with the state highway improvement project are not unintentionally applied to the section of state highway to be revoked. If new conditions are intentionally applied, then it is important to ensure that these obligations can be transferred at the same time as control and ownership of the road.

The designation or resource consent application for the state highway improvement

project *should* only refer to changes to the section of state highway to be revoked where these are required to mitigate adverse effects of the improvement project. Such changes *should* be considered part of the scope of the state highway improvement project.

If Waka Kotahi and the future RCA have agreed on other changes to the section of state highway proposed to be revoked and have agreed and documented funding arrangements for these changes, these could also be referred to in the consent documentation that is lodged with the consent authority.

Existing designation and resource consent conditions associated with the state highway to be revoked

If the road to be revoked is also subject to an RMA designation for state highway purposes or motorway purposes, then Waka Kotahi *must* initiate the alteration/transfer/uplift of the designation for the sections that are to be handed over.

In the event of a transfer of designation, Waka Kotahi *must* inform the Minister for the Environment as required by Section 180(2) of the Resource Management Act 1991.

Waka Kotahi *must* also identify if there are ongoing consent conditions that need to be transferred to the new RCA (in part or in full). Waka Kotahi *should* also review maintenance boundary agreements to ensure that any activities necessary to comply with the consent conditions are clearly allocated.

Land and property matters (encroachment and licences to occupy)

Before handover, Waka Kotahi *must* ensure that the legal basis for the state highway is properly established. This will ensure that revocation and transfer of control of the road to the future RCA do not inadvertently pass on legal issues that impact on the safety of the road or make the road (or parts of it) illegal. This may include private property encroachments or ambiguous land ownership.

In the case of the road corridor encroaching onto private property, this *should* be resolved to ensure the legality of the road. This process can take time, so it is important to start early. Not all encroachments into the legal road corridor need to be resolved. Many have no material impact and others may have been intentionally put in place.

The Waka Kotahi Property Team can help ensure that any implications are identified early and enough time is allowed for consideration of legal and/or legislative implications. In some cases, it may be necessary to arrange a survey of the boundaries of the section of state highway to be revoked, and lodge changes to the land registry. These issues *must* be identified early with remedial actions identified in the plan for handing over the road.

Waka Kotahi *must* also review any licenses to occupy and other agreements (e.g. regarding stock underpasses) and work with the future RCA to agree where licenses or agreements are still needed. A licence to occupy is any legal agreement that allows someone other than the road controlling authority (a third party) to use a specific area of the road reserve for a permitted purpose. If licenses cannot be transferred to the new RCA then replacement licenses will need to be established where required.

Road naming and property addresses

Waka Kotahi *should* work with the future RCA to determine what the road will be called once it is no longer a state highway. Iwi and hapū are often interested in being involved in road naming in conjunction with the future RCA. It will also be necessary to work with the postal service to update postal addresses or delivery

arrangements to address any issues triggered by the revocation.

Limited Access Roads

Limited Access Road (LAR) status will be retained unless there is a conscious effort to remove it. Under the Government Roading Powers Act 1989 (GRPA), when the state highway status of a road that has previously been declared a LAR is revoked, it will automatically become a limited access “local” road under section 96(1) of the GRPA.

If a state highway has been declared a LAR, Waka Kotahi may agree with the future RCA to remove all or part of its LAR status under section 88 of the GRPA as part of the preparations for handover.

If LAR status is to remain and Waka Kotahi is to retain land outside, but adjacent to the road corridor, the registered crossing places must be identified. This will enable legal access when Waka Kotahi is no longer the RCA.

Bylaws

Waka Kotahi must review, update (where required), and transfer any speed limit bylaws or any other bylaws such as clearways or stock control, to the future RCA by agreement.

Utility Operators

Waka Kotahi must notify affected utility operators of the proposed revocation, amending and transferring any utility agreement to the future RCA as required.

KiwiRail

Waka Kotahi must consider any agreements to railway grants and arrangements for the likes of level crossings and rail structures, including bridges over or under the existing highway. It should engage early with KiwiRail on these issues.

Maintenance and works required prior to handover

Waka Kotahi must not defer any planned maintenance or renewals on the section of the revoked road without the agreement of the future RCA. This could take account of changes in planned maintenance and renewals as a result of reduced traffic on the future local road.

Waka Kotahi should not direct additional maintenance funds to the road to raise its current standard of maintenance, outside of its normal annual budgets or programme for the road’s maintenance.

Waka Kotahi must consider if the maintenance handover will be handled in stages. Maintenance before revocation is funded from state highways operations budget unless responsibility for maintaining the road is formally delegated to the future RCA prior to revocation due to an early handover.

Any works that have been identified to ensure that the road is fit for purpose should be completed before the state highway is revoked, but there is the opportunity for the RCA to complete the work after revocation with funding provided by Waka Kotahi.

Once the state highway is revoked, funding responsibility is also transferred to the RCA and therefore any ongoing Waka Kotahi funding will be provided at the appropriate Funding Assistance Rate (FAR) for the activity.

Transitional funding assistance may be available for RCAs due to the revocation of a state highway and Waka Kotahi’s planning and investment group can be contacted for advice on this.

Timing of handover

Consideration *should* be given to how the revocation can be timed to suit the needs of the RCA (e.g. to align with the start of a new financial year and this does not unduly delay the handover). The notice to be published in the Gazette regarding the revocation decision (discussed in the next section of the document) will specify the date revocation will take effect, so there is flexibility to accommodate timing preferences where appropriate.

Consent must be obtained from the Secretary of Transport and decision Gazetted

Waka Kotahi *must* obtain consent from the Secretary of Transport to revoke a section of state highway. Consent is sought through a letter to the Ministry of Transport from the Chief Executive of Waka Kotahi which recommends that the state highway be revoked. The matters and information that *must* be covered in the letter include:

- a map of the state highway proposed to be revoked
- a definition of the route of the state highway, by town, road name or route position
- a statement confirming that the requirements of section 103(6) of the LTMA have been satisfied if Māori land is affected
- a statement that the requirements of section 103(8) of the LTMA have been met (i.e. consultation with relevant local, regional, and central government authorities); and
- proposed timing (i.e. when is the revocation is intended to come into effect).

An example letter of recommendation is included in **appendix one**.

If the Secretary of Transport provides their consent, Waka Kotahi will by notice in the Gazette, revoke the state highway with effect from the date specified in the Gazette notice.

An example Gazette notice is included in **appendix two**

Related information

- Waka Kotahi One Network Framework <https://www.nzta.govt.nz/roads-and-rail/road-efficiency-group/one-network-framework/>
 - Waka Kotahi Intervention Hierarchy <https://www.nzta.govt.nz/assets/resources/The-Business-Case-Approach/PBC-intervention-hierarchy.pdf>
 - Waka Kotahi policy regarding transitional funding assistance for maintenance of revoked state highway <https://www.nzta.govt.nz/planning-and-investment/planning-and-investment-knowledge-base/201821-nltp/activity-classes-and-work-categories/road-improvements-other-road-related-funding-policies-guidance/revoked-or-declared-state-highways/>
 - Process and requirements to legally stop a road that it is no longer required as a road <https://www.linz.govt.nz/regulatory/15002>.
-

Appendix One: Example letter to Secretary of Transport recommending revocation

[date]

Mr/Ms xxx
Chief Legal Advisor
Ministry of Transport
PO Box 3175
WELLINGTON

Dear xx,

Revocation of a section of State Highway 23 at Raglan, Waikato District Council

Growth in Raglan is encompassing the existing State Highway (SH) 23, which currently finishes at what once was the edge of the township. This growth includes the Lorenzen Bay Structure Plan development that is under way and which will result in the migration of the urban fringe further along SH23. There are safety issues regarding speed and crash risk, access onto SH23 and future proofing complexities for the growth of the town. Some of these issues have featured in service requests received by Waikato District Council and submissions from residents at the recent Speed Bylaw Hearing.

This revocation was initiated by Waikato District Council through their letter received on 17 July 2019 and formalised through a subsequent letter received on the 14 July 2020 following joint site inspections and exchange of forward works programmes and RAMM asset data. The revocation was also supported by Council staff at the Infrastructure Committee meeting on the 13 February 2019.

Waikato District Council also considers it desirable to revoke an additional 400m of SH23 in the future, following the replacement, by Waka Kotahi, of the culvert located at RS/RP 32/10.541, which is coming to the end of its working life. The process to replace it is already underway.

Waikato District Council have stated that no further actions need to be completed and that the section of SH23 can be revoked and transferred to Waikato District Council in its current condition. The revocation can take effect immediately.

I would be grateful if you could consider these changes and advise whether the Secretary consents to them being notified by way of Public Notice in the New Zealand Gazette.

Please find attached the following documents to facilitate the above request:

- 1) Layout drawing showing location and the section of State highway to be revoked;
- 2) Letters from Waikato District Council requesting the revocation;
- 3) A letter of support from Ngaati Maahanga;
- 4) A message of support from Waikato Tainui; and
- 5) A draft Gazette notice for your consideration.

Pursuant to Section 103(6) of the Land Transport Management Act 2003, both the iwi and the hapū have been consulted. The Ngaa Uri o Maahanga Trust (Ngaati Maahanga), being Mana Whenua for the Raglan area, have provided a letter of support for the change. Waikato Tainui, as iwi, has been consulted and have indicated support for the hapu decision. I consider this meets the requirements of the Act to consult Māori.

Pursuant to Section 103(8) of the Land Transport Management Act 2003, I can confirm that this action is at the behest of Waikato District Council and I consider this meets the requirements of the Act.

There is no Kāinga Ora-Homes and Communities development project area adjacent to the revocation and therefore there is no requirement to consult.

I confirm that I have the delegation from the Waka Kotahi Board to make this request on behalf of Waka Kotahi.

If you require any further information please contact xx in the Waka Kotahi Hamilton Office ph. xx.

Yours sincerely

Nicole Rosie
Chief Executive

Appendix Two: Example Gazette notice regarding revocation

Revoking a section of state highway and declaring a section of state highway—State Highway 36, Tauranga

Pursuant to section 103 of the Land Transport Management Act 2003, Waka Kotahi, with the consent of the Secretary for Transport, gives notice that, with effect from 1 June 2011:

- a) Part of State Highway 36, described in the First Schedule, is revoked;
- b) the section of new road, described in the Second Schedule, is declared to be State Highway 36.

First Schedule

Part of State Highway 36, commencing at RP 0/0 at the intersection of State Highway 29 and Pyes Pa Road extending in a generally southerly direction to RP 2/1.93 (on Pyes Pa Road). The length of road to be revoked is 3.93 kilometres.

Second Schedule

Part of State Highway 36 in Tauranga, commencing at RP 0/0 at the intersection of State Highway 29 and Takitimu Drive and extending in a generally south easterly direction along the recently constructed Pyes Pa Bypass road and ends at RP 0/4.50 (about 160m south of the recently constructed intersection with Pyes Pa Road); a total distance of 4.50 kilometres.

Iwi Consultation to be Demonstrated When Seeking an Order in Council to Declare Motorway

In this Section

This section gives the iwi consultation requirements pursuant to s73 of the GRP Act for road or land to be declared motorway.

Iwi Consultation to be Demonstrated when Seeking an Order-in-Council to Declare Motorway

New Zealand Transport Agency Submission

A copy of the submission approved by the New Zealand Transport Agency Board must accompany all requests for an Order-in-Council. The submission needs to include the following information:

- Identify all iwi and hapu with interests that may be affected by the declaration.
- State whether or not the identified iwi and hapu have been consulted.
- If any iwi or hapu has not been consulted, explain why.
- State whether any iwi or hapu has any objections to the declaration.
- If an iwi or hapu has objections, explain what they are.
- If objections have been made and not resolved, explain why the declaration should proceed.

Documentation

The request must also include a copy of a statement from a representative of each iwi and hapu confirming whether or not there are any objections to the motorway declaration.

The statement must clearly identify the land area in which the iwi or hapu has interests.

Legal Descriptions for Gazette Notices

In this Section

This section contains the criteria to be followed when writing legal descriptions for the declaration or revocation of State highway and limited access road and the promulgation of bylaw restrictions.

Criteria for Legal Descriptions

The criteria below are to be followed when writing legal descriptions for State highway, limited access road or bylaws to be promulgated in the *New Zealand Gazette*.

At A (in B District etc. if obscure) commencing at/to:

In order of preference:

1. **A road:** *the intersection with D Road or at a point 123 metres generally (direction) of D Road (Route Position [start] to Route Position [end]); a distance of (X metres or X.YY kilometres -to 2 decimal places); or*
2. **A bridge or (large) culvert:** *the (northern etc.) abutment of E Bridge or F Culvert or at a point 456 metres generally (direction) from the northern abutment of E Bridge or F Culvert (Route Position [start] to Route Position [end]); a distance of (X metres or X.YY kilometres -to 2 decimal places)*
3. **A property boundary (to be used when there is no other possibility):** *at the (direction) boundary of Lot 7 DP 89, CT G/10.*

The direction of the restriction and distance **must** be included.

The route positions follow the description and **must** be those of the start and end points, not the feature from which the description is referenced.

The following are examples of suitable descriptions:

State Highway No 60 to include the section of newly constructed road in Tasman District, commencing at a point 150 metres east of its intersection with Maiseys Road and proceeding in a generally westerly, then a generally northerly direction to a point 205 metres south of its intersection with Bronte Road East (Route Position 0/9.63 to Route Position 1/11.80); a distance of 2.02 kilometres.

State Highway No 16 to include that section of road between Helensville and Wellsford, commencing at the eastern abutment of the Kaipara River Bridge, Helensville and extending in a generally northerly direction along Mill Road, Commercial Rod, Garfield Road, Bridge Street, Railway Street, the Kaipara Coast Highway and Port Albert Road to the intersection with State Highway No 1 at Wellsford (existing Reference Station 47 to new Reference Station 107); a distance of approximately 58.20 kilometres.

The section of State Highway No 6 in Westland District from a point 950 metres in a generally north-easterly direction from the intersection of Richards Drive to a point approximately 150 metres in a generally southerly direction from the intersection with Richards Drive; (Route Position 463/5.25 to Route Position 463/6.35); a distance of 1.10 kilometres.

Checklist of Issues to Consider when Highways are Declared or Revoked

Issue	Detail	Notes
Handover		
Maintenance	Condition at handover, current maintenance funding and commitments (negotiation with local authorities and NZTA) and deficiencies in Level of Service, costs and timeframes to bring them up to an acceptable standard.	Guideline is routine maintenance work completed to normal standard, otherwise all other assets to be accepted in current condition.
Signposting	Destination signs and SH route markers (new and revised signs).	LRMS project implementation needs to be remembered.
Delineation/Speed advisory signs	To current policy/standards	
Limited Access Roads	Advice to TLAs on which roads are LAR and conditions	TLA to determine future of LAR on revoked highways
Implementation Funding	For all costs on activities in this schedule	Provisional funding to be made in the budget for physical works. Funding to be confirmed later.
Bylaws	Copies of all Bylaws to be obtained	NZTA to ascertain any bylaws and advise the TLA
Inventory Matters		
RAMM Data	Refer to Road Asset Information Specialist for details of process to be followed.	System Managers or the Alliance Manager (WTA) System Managers or Alliance Manager (WTA) to seek information from TLAs where available.
Highway Info and Route Data Sheets	As above.	As above.
Reference Stations	As above.	As above.
Overweight Permit Data/Bridge Structural Inventory	Bridge structural data to be compiled and provided to System Administrator	
Aerial Photography	To be included in overall programme of flying.	Programme managed by Senior Manager Maintenance and Operations
Bridge Descriptive Inventory	Regional Bridge Champions to action with Regional Bridge Consultants	Reminder needed to System Managers to gather the data.

Issue	Detail	Notes
Commercial Road Maps	NO to advise major map companies	No fixed deadline for this.
RMA Issues		
Designation on District Plans		Planners to advise on optimum timeframe.
Internal Documentation		
State Highway Network Maps	Senior Manager Maintenance and Operations and Lead Advisor Asset Quality to agree, followed by liaison with suppliers.	
Gazette Notices	Detailed descriptions of terminals and associated RPs required 4 weeks prior to Board meeting.	Will need to work up details (with help from System Managers or Alliance Manager (WTA)).
Speed Limits	Secure information from TLAs for inclusion in SH Speed Limit register	System Managers or Alliance Manager (WTA) to compile to allow gazettal within 1 month of assuming responsibility for highway
Valuation Data	Discuss implications with Lead Advisor Asset Quality.	Include in instructions for next valuation. Must include assets like rest areas, retaining walls and other structures
Select new SH numbers	SMMO to review with Lead Advisor Asset Mgmt to fit current numbers and previously understood 'rules'.	Utilising current numbers to 99, with occasional use of alphas.

Recovery of the Cost of Damage to Road Furniture and Equipment

Legal Basis

A review of the law and the policy has been undertaken. The review has concluded that the law and the policy (in relation to damage, etc.) as based on the law of negligence are legally uncontroversial. If a person acts negligently and causes damage, that is reasonably foreseeable as resulting from the negligent act, to property, then generally that person is liable to the owner of the property for repairs or replacement. If there are also consequential losses such as traffic management, site clearing etc., which are reasonably foreseeable as arising from the damage caused, then to the extent they are reasonable, they can be recovered.

The issue of whether a person is liable for losses in the absence of physical damage can be less clear, so no claims should be made in this situation without seeking legal advice to review an analysis of the facts and law relating to particular incidents.

Responsibilities of regional offices

Where damage has occurred to highway assets, infrastructure has been compromised and/or a significant disruption has eventuated through 3rd party negligence; then as a prudent asset owner, NZTA should seek reparation for costs incurred. Discretion should be exercised in every case, including when lesser amounts are involved (for example, less than \$1,000).

The regional office should be advised promptly by the Primary Maintenance Supplier of the verification of the party alleged to be liable and the repair costs (and/or traffic management costs as appropriate) of any damage done to road furniture or equipment. The process flowchart is included on page 80 below.

When the party alleged to be liable is able to be identified (generally the appropriate driver) and it is deemed appropriate to make a claim, Regional Offices should send out the first letter advising of a potential claim. When satisfied as to the legitimacy of the claim and in receipt of the cost details, Regional Offices should send the second letter itemising the claim and make all reasonable efforts to recover these costs appropriately, promptly and efficiently.

Note that both full cover and third-party insurances should cover these costs and should be able to be claimed against. Unless the asset that was damaged was already in an upcoming maintenance programme to be replaced as a maintenance renewal, there is precedence in case law that the recoverable cost is full replacement value without depreciation.

Principal and Senior Asset Managers are empowered to manage the process in the usual course of business. If there are concerns about any specific case or the need to take legal proceedings, the System Managers or Alliance Manager (WTA) should be consulted and the final decision on whether to recover costs rests with the System Managers or Alliance Manager (WTA). The System Managers or Alliance Manager (WTA) has full discretion to pursue or waive the recovery of costs including the seeking of redress through the Disputes Tribunal or District Court.

Summary of Principles

To prove liability in negligence the NZTA must be able to show that it is more likely than not that:

- the person claimed against owed a duty of care to the NZTA (i.e. a duty not to drive below the standard of a reasonable and prudent driver so as to
-

cause loss to the NZTA);

- the person claimed against breached that duty of care (i.e. drove negligently);
- the breach of the duty of care caused loss that was reasonably foreseeable as arising from the breach;
- it is reasonable and fair between the parties for compensation to be paid;
- there are no countervailing considerations in either policy or the public interest that outweigh *prima facie* liability; and
- the amount claimed is reasonable.

Where the loss is economic and not the result of physical damage to property (for example, traffic management costs only) no claim should be made without first obtaining legal advice.

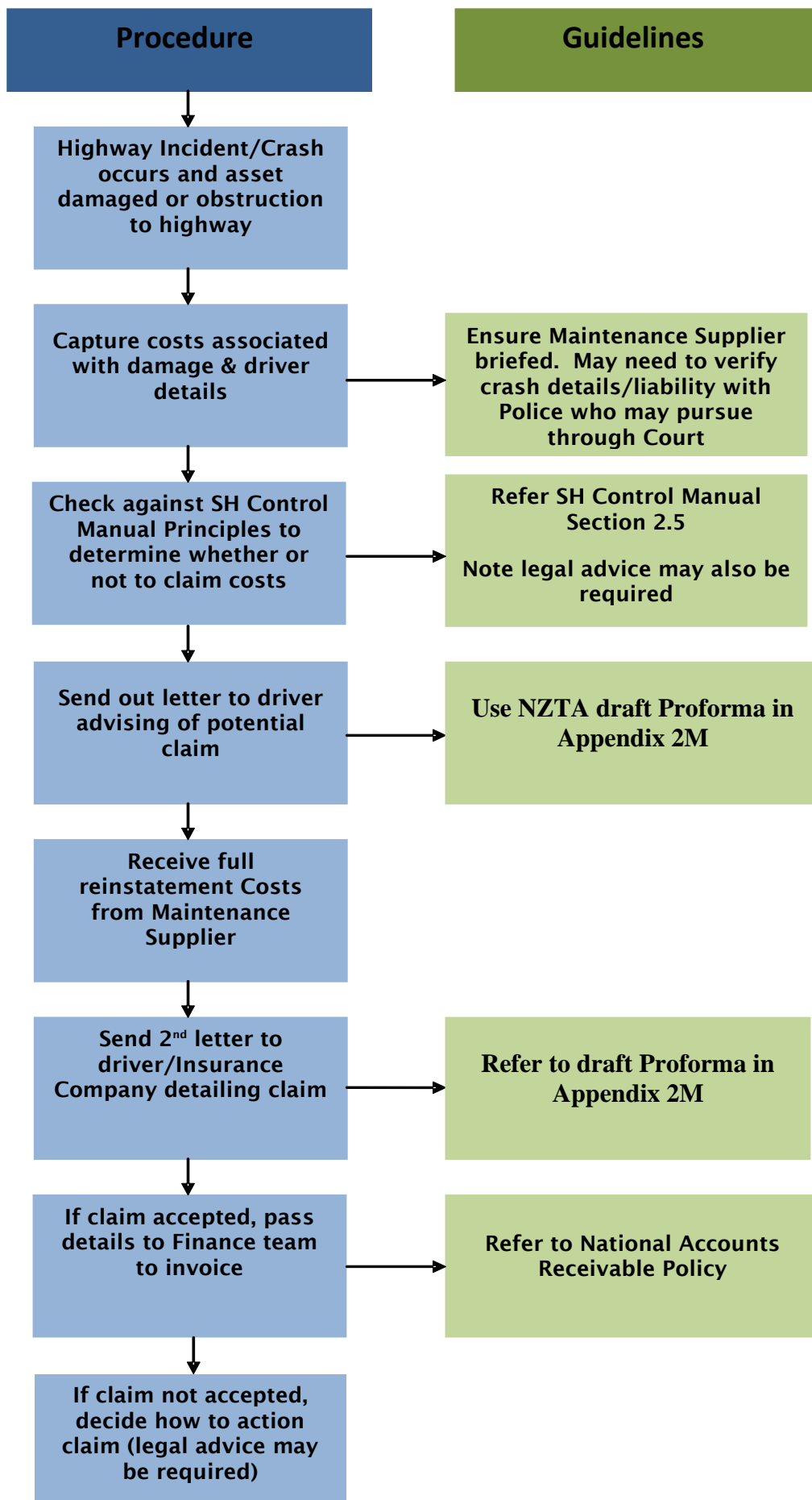
Guidance in respect of fatal crashes

If it can be proven that a deceased driver caused loss through negligence, then it is legally possible to pursue compensation from the deceased's estate. This is a matter of extreme sensitivity and must be approached with caution. While matters such as empathy/sensitivity do not necessarily displace the legal liability, such would be relevant to reasonableness, fairness, and the reputation of the NZTA.

For a fatal crash, or a critical injury crash that might potentially become a fatal crash, it behoves the NZTA to ensure that the family of the person who caused the damage and is either deceased or is critically injured is not put under further stress by us. Where the claim is against the estate of this person and therefore directly impacts on the family, no claim should be made.

However, if the matter is being dealt with by an insurance company, and the issue is divorced from the family and is a standard business transaction, then so long as the risk is properly managed the cost recovery could proceed. It would be a decision for the System Managers or Alliance Manager (WTA) to make to consider whether to continue the action should the circumstances change. It must always be kept in mind that this is a very sensitive issue requiring ongoing management.

Crash Damage Cost Recovery Process



Crash Damage Cost Recovery Letters

Letter 1: Immediate response

Wednesday, 10 April 2013

<Customer Name>

<Address 1>

<Address 2>

<Address 3>

<Regarding: State Highway Damage>

Dear <customer name>,

Potential damages claim – vehicle ABC123 – accident State Highway 99

I am writing to you about the incident involving the above vehicle on [24 January 2013], as our information identifies that you were involved in the incident at the time.

The purpose of this letter is to inform you that the NZ Transport Agency is reviewing the circumstances of the crash you were involved in but has a view that you may have some responsibility for it, and may seek to make a claim against you for the costs to the NZ Transport Agency arising from this event and the damage caused.

We are mindful that this may not be something that you had considered following this event. It is NZ Transport Agency policy about prudent use of essential funding that consideration is given to claiming such costs where a person is legally liable in the law of negligence to pay compensation.

In this instance the NZ Transport Agency has incurred costs relating to damage of highways' assets and/or the costs of road management, for example closure and clean-up.

I realise that this may be the first time that you have been contacted by a road controlling authority over such a matter and that as a result you may have further queries. If you wish to discuss any aspect of this matter further, or provide any information to the NZ Transport Agency, please do not hesitate to contact me at the email address or telephone number below.

Finally, you may wish to obtain independent legal advice about this matter. If you do not have access to a lawyer, you may wish to contact your local community law centre.

We will write again when we have completed our review of the circumstances of the crash and your involvement in it.

Yours sincerely

for System Manager

Letter 2: Follow-up letter

Friday, 10 May 2013

<Customer Name>

<Address 1>

<Address 2>

<Address 3>

<Regarding: State Highway Damage>

Dear <customer name>,

Damages Claim – vehicle ABC123 – accident State Highway 99

Further to the previous letter of [10 April 2013] I am writing to you about the incident involving the above vehicle on [24 January 2013], as the information we have identifies that you were involved at the time. I hope that you have fully recovered from any immediate impact of this event.

The purpose of this letter is to inform you that, having reviewed the circumstances of this crash, the NZ Transport Agency considers that the cause of the damage (and necessary remedial works) was as a result of negligence on your part. The NZ Transport Agency intends now to claim the costs it has incurred as a result of this event.

In this instance the NZ Transport Agency has incurred costs of \$XXXXXX relating to damage of highways' assets and/or the costs of road management, for example closure and clean-up. You will find these costs itemised in the attached schedule.

Please contact me at the email address or telephone number below to let me know whether you accept liability for these costs.

If you accept liability, we understand that the full cost may be difficult to find all at once and would be happy to discuss the possibility of accepting payments over time.

In many cases road users have insurance that covers the cost of such claims by third parties for such incidents. If this is true in your case, and you wish for us to deal directly with your insurance provider, please advise us as soon as possible and we will ensure that all future correspondence will go through them.

If you deny liability, please contact me to inform me why you consider you are not liable.

If we are not able to come to an agreement with you about this matter we may pursue a claim in either the Disputes Tribunal or District Court. You may wish to obtain independent legal advice about this matter. If you do not have access to a lawyer, you may wish to contact your local community law centre.

If you wish to discuss any aspect of this matter further, please do not hesitate to contact me at the email address or telephone number above.

Yours sincerely

for System Manager

Safety during Work

Overview

The provisions of the Health and Safety at Work Act 2016 apply to all NZTA activities on or off the highway. Under this Act NZTA, its Consultants and Contractors have a legal responsibility to ensure that employees and members of the public are protected from risk of injury or illness in the workplace. The Government Roadway Powers Act s61 requires the Board to take all steps necessary to ensure a safe environment under the provisions of the LG Act s353, 1974.

General thrust of the Act

The Act generally seeks compliance through the formulation and use of a common safety policy by employers and employees. The safety policy should embody elements such as those that follow:

Employers will ensure:

1. Safe working practices and first aid skills are taught.
2. Safety and health risks are minimised or eliminated.
3. All necessary safety and protective equipment is provided.
4. Employees and members of the public are protected from risk of injury or illness in the workplace.
5. Safety rules and regulations are understood and strictly observed.
6. Safety and health performance targets are set and monitored.
7. Periodic audits of safety and health systems and procedures are carried out.
8. Feedback from employees through Health and Safety Representatives and Safety Committees is encouraged.

Employees will:

1. Act safely at all times.
 2. Take all reasonable precautions to prevent the risk of injury to themselves or others.
 3. Use safety and protective equipment provided.
 4. Not interfere with any safety device or protective equipment.
-

Roadwork sites

System Managers or Alliance Manager (WTA) are responsible under s353 of the LG Act 1974 to ensure that proper actions are taken for safety of the public and workmen by the erection of barriers, signs, lights, road closure signs, etc. as appropriate during the execution of any work on State highways. This includes work carried out by utility authorities or any other authorised person working on or near the highway.

Standards and procedures for temporary traffic control

The standards for traffic control at any work site on the State highway are set out in NZTA's Manual "NZ Guideline for Temporary Traffic Management".

Coroner Inquests

Purpose

This section contains guidelines on actions to be taken following fatal crash on a State highway, preparation for attendance at a Coroner’s hearing and upon notification of the coroner’s recommendations.

A Coroner’s inquest may be held when a death occurs as a result an accident. The purpose of the hearing is to determine the cause(s) of death and circumstances that led to it.

In this policy

In this section the following topics are covered.

Section	Page
Role of NZTA	72
Powers and role of a Coroner	72
Preparation for an inquest	72
Procedure for preparing for an inquest	73
Legal Advice	74
Conduct at Inquest	74
Coroner’s Potentially Adverse Findings	75
Responding to a Coroner’s findings	75

Role of the NZTA

The NZTA’s role is to assist the Police and the Coroner to accurately identify any factors relating to the condition of the section of State highway at the time of the crash.

The NZTA’s objectives are to ensure that the Coroner’s report on road conditions and the supporting documentation are accurate and do not contain any unjustified comments on the road or recommendation that cannot feasibly be implemented.

Powers and role of a coroner

A Coroner has the powers of a district court judge, including the power to summon witnesses.

The purpose of a Coroner’s inquest is to establish facts, not to apportion blame. A Coroner may, however, make any recommendations or comments on the circumstances giving rise to the death and/or the actions of any individual or organisation, which could reduce the chances of further deaths. Before doing so a Coroner must take reasonable steps to notify an affected party of the proposed comment and provide a reasonable opportunity for that party to respond.

Preparation for an inquest

A death on a State highway will almost always become the subject of an inquest and the relevant NZTA office should begin preparing for an inquest as soon as a death is notified.

An inquest is usually deferred if criminal charges are involved. For that or other reasons inquests may be significantly delayed. It is important to assemble the evidence as soon as practicable after the accident and not defer until the date of the inquest is known.

NZTA policy is to obtain a consultant's report on every fatality and this needs to be considered and action taken where necessary. Even in the case of apparently extreme driver error it is not safe to assume that the condition of the road will not come under scrutiny.

Procedure for preparing for an inquest

The procedure for preparing for an inquest is as follows:

- A senior staff member who has experience with inquests must manage the procedure. If possible that person should be the one who will present evidence on behalf of the NZTA, if necessary.
- All media releases must be given careful consideration, taking into account NZTA's reputation and interests, the sensitivities of the situation. Media statements should be by NZTA staff at System Managers and Alliance Manager (WTA) or Regional Manager, System Design level, not by consultants. Debate in the media about accident causes should generally be avoided. Generally, communication with the media should be avoided while an inquest is taking place, during the Coroner's hearing, and before between then and when the Coroner has issued the final report.
- The NZTA must be able to demonstrate that reasonable procedures are in place to identify and deal with unsafe features of the state highway network. The NZTA's Standards and Guidelines Register for Land Transport has a list of specific manuals and standards that have been written to meet this requirement and can be relied upon as best practice at a Coroner's inquest.
- The NZTA's general position is that compliance with these manuals and standards is good evidence of reasonable conduct. Conversely, NZTA needs to have a good explanation for any failure to comply. What is reasonable is an objective assessment from the Coroner or other Courts, not solely for the NZTA to decide.
- Care should be taken in the preparation of all reports (refer to Chapter 2 section 3.3 of the *State Highway Asset Management Manual*).
- Should the Police or the Coroner require the NZTA to provide evidence, documents and/or data, the material must be thoroughly checked to ensure its accuracy prior to release. The NZTA may request a consultant to supply information or data, but the information, data and any interpretation must be checked by NZTA personnel before it is relied upon and made available. Particular care is required with releasing RAMM database information. Consultants are to be instructed that they are to communicate with the Coroner through the NZTA, not direct. The only exception would be where the conduct of the NZTA and its consultants/or contractors are under separate consideration and their interests diverge. If such a case arises, each party will probably be separately represented, but co-ordination is to be encouraged.

It is important to check the requirements for dealing with inspection and maintenance of the State highway network as given in the relevant NZTA manual at the date of the crash. By the time that the Coroner's inquest takes place these requirements may have changed.

The NZTA staff member managing the procedure must ensure that all evidence to be given at an inquest should be discussed amongst the NZTA team (staff, consultants, and contractors) to ensure that there is agreement on obvious questions and those inaccurate or imprecise comments are not made. The

Coroner will hear evidence in open court, which means that the public and media may be present. The NZTA should take care to minimise any opportunity for its evidence to be misconstrued or misreported. This is particularly important with technical evidence that must be accepted and understood by people who do not have a detailed technical knowledge. The NZTA's prime objective is to ensure that all evidence and responses are clear and accurate.

The person managing the procedure should anticipate issues relating to funding, weather and other circumstances that may need explanation at an inquest.

Technical matters such as SCRIM reports will need to be explained in layperson's terms.

Copies of written submissions prepared by all parties who will appear at the court will normally be available to other parties before the hearing. These should be requested at least one week prior to the hearing so that the NZTA is fully prepared for the matters likely to arise.

Where necessary, specialist assistance should be sought from the Wellington Office for either technical information or presentations to the court.

Where it is appropriate and any NZTA fault/recommendation is an issue, the NZTA may (usually through its solicitor) be able to cross-examine the other witnesses. The NZTA team should consider what questions could be usefully asked and liaise with its solicitor.

Legal Advice

The NZTA should instruct a solicitor where there are likely to be complicated legal issues, or where the hearing is likely to require specialised legal skills, such as the cross examination of witnesses, or conflicts among the NZTA, its consultants and contractors, or where adverse findings or recommendations of what the NZTA might consider to be inappropriate corrective measures are likely. In all cases where there is any doubt as to the legal position the advice of a solicitor should be sought at an early stage.

Conduct at Inquest

The NZTA's witnesses should bear in mind the following when attending/giving evidence at an inquest:

- Inquests are frequently tense and emotive. Often the deceased's family and friends are present. In the case of multiple vehicle crashes or surviving drivers, feelings may run high. It is important that the demeanour of NZTA representatives reflects the gravity of the situation.
 - Similarly, emotive or inappropriate comments should not be expressed in written or oral evidence.
 - The NZTA's submissions should not make comments like the section of road is "dangerous" or "an accident waiting to happen". While these are not professional judgements, they can be cross-examined. NZTA staff and consultants are usually giving expert evidence and proper considered statements are required. "Off the cuff" expressions of personal opinion (written or oral) are not appropriate.
 - On very rare occasions there may be a case for not answering a question on the grounds of self-incrimination. That would most likely be in the case of a fatality involving road works under the control of the NZTA. If that prospect arises, legal advice must be obtained as soon as possible. This would be a most unusual and highly publicised position that must not be taken lightly.
-

There may be circumstances where the NZTA’s legal interests are clearly at odds with those of its consultant. In these cases, the NZTA should always seek its own legal advice and suggest that the consultant engage its own independent solicitor.

The NZTA may, in some extreme circumstances, be able to challenge the findings of a Coroner (for example, where there have been irregularities in the course of the inquest). Such situations are rare. It is always better to have the process and official record correct from the beginning.

Coroner’s Potentially Adverse Findings

Where a Coroner intends to comment adversely on any living person, the person must be notified and given a reasonable opportunity to be heard. Sometimes this does not happen, because a comment about “the road” is not always regarded as being adverse to anyone or, an entity like the NZTA or a consulting firm is not a “living person”. Where the NZTA, its consultants, or contractors do get notice of an intended adverse comment:

- Consultants and contractors must refer the notice and the proposed response to the NZTA. The NZTA must also co-ordinate any response it intends to make with its consultants and contractors as appropriate. The purpose is to ensure that any response is not itself adverse of any of the other parties without their having an opportunity for input.
 - There must always be a response; even if it is just that there is no objection to the comment.
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Responding to a Coroner’s findings

The NZTA will receive a copy of any Coroner’s recommendation affecting the NZTA. (Occasionally that will be the first the NZTA knows of the inquest; but that should not be the case).

1. All Coroners’ Reports shall be copied, or forwarded, to the Lead Safety Adviser, Roads and Roadsides.
2. The Lead Adviser Safety will contact appropriate regions, divisions and teams for responses to particular issues. As necessary those responding will be requested to provide an indication of cost to meet any of the Coroner’s findings.
3. On receipt of the responses, the Lead Adviser Safety will, as appropriate, consult with and draft a letter for Director Road Safety for approval and signature and will, as appropriate, also draft and issue instruction or recommendation memos for changes in procedures/manuals.

The NZTA must always:

- Take every recommendation seriously.
 - If it is inappropriate (e.g. a recommendation for a new style of road sign or marking), impossible (e.g. beyond the powers of the NZTA) or has undesirable consequences (e.g. would create another hazard) a response should still be prepared. Doing nothing is not an option. Any decision not to implement a recommendation promptly must be made at National Manager, Maintenance and Operations level or above.
 - Implementation of recommendations is not mandatory. They are not binding on the NZTA. However, not implementing a recommendation promptly is a matter for considered decision as the Coroner must be informed that
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recommendations are not being implemented, and why.

The recommendations (and other findings) will usually be part of the public record so the NZTA should expect media questions about them.

Traffic Control Devices and Pavement Markings

Legal requirements

All traffic control devices when installed must comply with the *Land Transport Rule: Traffic Control Devices 2004* and its amendments.

Pavement markings

The legal requirements for pavement markings are described in the *Land Transport Rule: Traffic Control Devices 2004*, with its amendments.

Pavement markings shall be in accordance with the following guidelines:

1. *Land Transport Rule: Traffic Control Devices 2004*, with its amendments.
 2. *Manual of Traffic Signs and Markings, Traffic Control Devices Manual and relevant Traffic Notes.*
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Response to the Electricity (Hazards from Trees) Regulations 2003

Process

1. It is important that the proper legal response be given to tree notices issued under the Regulations and meet the responsibilities for such notices and to properly meet the requirements of section 15, 16 and 17 of the Regulations. Note that s.15 gives only three specific instances when no-interest notices could be issued but the format leaves it open to other reasons for such a response.
 2. There is no set format for such a response or a no-interest notice. As a necessity any response will need to be clear whether the NZTA accepts ownership of the tree(s). Any notice should include the words “no-interest notice” and highlight that this notice is a response in terms of section 16(1) of the Regulations (this section is reasonably more clear-cut in purpose) that the tree (or trees) in question are of no interest to the NZTA as occupier of the land. The response should be of the same transmission type as the notice that was received (electronic is allowed if received electronically). Note that 10 working days is the limit and after that the NZTA is liable for the outcome.
 3. The specific process for each individual or group of trees should be:
 - a. The lines company identifies specific trees of issue. It must be specific trees - if they just say shelter belts in Raetihi for example then they have not met their requirements either. Keep querying until they identify the trees specifically.
 - f. The tree owner is responsible for the tree and therefore it is first necessary to establish if there is a clear owner. Check the register. If the trees have been identified advise the "owner" to take action. If not, contact the adjacent landowner(s) to find out if anyone has an interest and will take ownership and responsibility. Add such people to the register.
 - g. Decide whether it is necessary for NZTA to take ownership and if the NZTA should therefore have an interest in the tree(s). Advise the lines company if there is an interest or not and who will action that interest.
 - h. Any trees that nobody has an interest in can be removed.
 4. Over time, each local NZTA office could assist with the process of establishing who does have an interest with each of these groups of trees and therefore who would either agree to take responsibility for managing them or agree to their total removal. Note that the first step for each office should be to list all trees in the respective District Plans for their area and list all sections of highway through or adjacent to National Parks, Forest Parks or formally approved reserve areas.
 5. Also note the issue contained in s.17(1) where the no-interest notice is rescinded if access is not granted to allow the lines company to undertake works to action removing or trimming the tree(s). In such a case the NZTA would have the liability of actioning the tree issue thrust back on it so it is very important that if access cannot be given on the
-

day requested by the lines company, that the wording of any correspondence or notice given cannot be construed in any way to be a refusal to grant access. I would recommend that there should even be an explicit statement that this was not a refusal to grant access.

6. It is essential that the response to the lines company requires that all trimmings and any other debris is removed and that any material left on site is a likely breach of both the Regulations and s.51 of the Government Roading Powers Act 1989 and will be actioned accordingly.

Urban Trees

In actioning any response in an urban area, it is essential to make certain that the local authority is involved because of the land ownership issues that result from the provisions of the Local Government Act 1974.

Each office should clarify the process with each local authority for trees in all of their urban areas. Then when a lines company identifies specific urban trees to be of issue it should be a simple matter to respond. If the local authority will accept unexclusive “ownership” of all trees in all of their urban areas, it should be possible to redirect the notice to the local authority as the “owner”. This would be a simpler approach that avoids the whole difficult issue of road ownership.

However, if the local authority will not make its position clear, then it would be a matter of resolving the issue on a one-by-one basis for each tree for which a notice is received. Note that most local authorities have bylaws that make the adjacent resident responsible for maintaining urban trees, but that these cannot be applied to State highways without delegation as the NZTA has the powers of control, not the local authority. It would still pay not to jump straight in with a no-interest notice, but also to resolve a process with the local authority.

Small Claims Guideline

Introduction

1. The Transport Agency receives a range of private property damage claims including those associated with vehicles that have struck imperfect pavement surfaces such as potholes.
2. When such claims are received, as much as possible of the relevant factual background needs to be collected, communications carefully managed, and any threat of litigation or uncertainty should be reported to the legal team.
3. Occasionally the Transport Agency also receives personal injury claims associated with vehicle accidents. However, the Accident Compensation Act 2001 generally bars these types of personal claims according to s 317(1), where typically the plaintiff has cover under the Act. Any claim of this type should be referred to the legal team.

Background

1. The Transport Agency does not act as an insurer to the public in relation to its use of the state highway network, and similarly does not provide warranties or guarantees in relation to hazards and failures that can occur. However, the Agency must act in good faith in deciding how to respond to any claim and it has a certain duty of care in dealing with the management and maintenance of the state highway network.
 2. Certain situations can attract liability where it can be shown that the Transport Agency or its contractors have been ‘negligent’ in responding to a known and serious defect, and where an omission or lack of proper care and attention in responding has resulted in quantifiable damage to personal property.
 3. Nevertheless, at any one time a certain proportion of roads will contain known defects that the Transport Agency has no ability to respond to. This type of constraint is also relevant in assessing the ability to reasonably respond and in determining the limits of the ‘duty of care’ that can be expected.
 4. It is useful to be aware of the definition of negligence that is: a breach of duty of care that results in loss or injury to a person or property that owed that duty. Negligence usually includes doing something that an ‘ordinary, reasonable and prudent person’ would not do, or not doing something such a person would do considering the circumstances, situation and the knowledge of parties involved.
 5. In civil liability, if negligence is proven, on the balance of probabilities, an aggrieved person [or entity] is entitled to claim damages in a court.
 6. As an example, in the situation where a ‘defect’ has been identified
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according to the State Highway Network Outcomes Contract VISUAL AUDIT GUIDELINES in conjunction with the OPMs outlines in the Network Outcomes Contract Maintenance Specification, and the response has breached the standard response time or quality of repair, then the Transport Agency may attract liability in relation to the respective damage.

Collection of Facts

1. Relevant fact collection is critical to assessing a claim. Typically, this will require a detailed site inspection, and information on the following type of issues:
 - i. pavement condition prior to and at the time of the incident, according to the State Highway Network Outcomes Contract VISUAL AUDIT GUIDELINE in conjunction with the OPMs outlined in the Network Outcomes Contract Maintenance Specification.
 - ii. local historical complaints and associated defects;
 - iii. environmental conditions that may contribute to the defect;
 - iv. prior and current difficulties in responding or repairing;
 - v. historical knowledge of the contractor and Transport Agency at the time of the incident in relation to the particular defect;
 - vi. omissions such as delay in responding to the incident and providing appropriate remedial mitigation and warning notice or traffic management;
 - vii. conduct of the claimant
 - viii. detail of the vehicle damage and proximity of this in relation to the defect;
 - ix. actions or omission of the Transport Agency to remedy or manage the road defect;
 - x. witness statements of those with direct knowledge of the incident and surrounding circumstances;
 - xi. expert opinion and review of the incident.
-

Communications

1. Careful attention to communications to claimants is required when dealing with applicant claims, because ultimately any of the communications may be used in evidence against the Transport Agency in reviewing facts and establishing the conduct of the parties.
 2. It is important to keep the applicant informed of the process when responding to their claim and provide anticipated timeframes before a conclusive decision can be provided.
 3. The circumstances of claims vary considerably, therefore it is particularly important to identify the relevant facts and actively seek further information if these are deficient. After analysing the background and a decision is reached, the reasoning for that decision must be included in the correspondence to the claimant.
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Disputes Tribunal

1. If the claimant decides to refer the matter to the Disputes Tribunal, a lawyer can't represent you in the hearing, and there are no judges. Each hearing is run by a referee who will encourage both sides to reach agreement. If they can't, the referee makes a decision and this decision is binding.
2. Although, the tribunal is not a court of record, and the decisions do not create a formal precedent, they can be persuasive because the decisions are public information and searchable.
3. You can give your case to the Tribunal in writing in the form of a written submission and appear to present this at the hearing. This should be submitted to the Tribunal before the hearing if possible (post, courier, scan or hand them in at the court counter, quote the CIV number from your notice of hearing and the hearing date, and send a copy to the claimant). It is important to submit rigorous submissions for the Transport Agency, and the in house legal team can assist with this aspect. You can take relevant witnesses and experts with you, who can support your submissions to the referee.
4. The Tribunal replaced the Small Claims Courts in 1988 and is covered by the Disputes Tribunal Act 1988 and Disputes Tribunals Rules 1989. For further information contact a member of the legal team.

Legal Review

1. The internal legal team should be contacted in the first instance if the matter appears to create a potential litigation risk, and then also to assist in any decision making, assessment, review, and final communications.
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Small Claims Letters

Letter 1: Immediate response; acknowledgement of claim

Wednesday, 10 November 2017

<Customer Name>

<Address 1>

<Address 2>

<Address 3>

<Regarding: State Highway Claim>

Dear <customer name>,

CRMS Reference:

Thank you for contacting the NZ Transport Agency. We understand that your vehicle was damaged when passing (add details of specific location of incident).

We appreciate you taking the time to raise your concerns. Being responsible for state highway maintenance and operations, we have a duty of care to all road users and we do take this duty of care seriously. In the (West Waikato South area), a maintenance contractor, (ABC Construction Limited), is employed to carry out all maintenance works. The maintenance contract specifies standards of works to be achieved including defect repair methods and response times.

Thank you for providing (the photos). If possible, please provide further details as per the attached to help the contractor review the relevant maintenance records and provide a response.

Your request will be passed onto (ABC Construction Limited) and please feel free to contact me or the contractor directly on (07 123 456). It will be helpful if you have the reference number CRMS (8000012345) handy when you make contact.

Or if prepared by NOC

If possible, please provide further details as per the attached so we can review the maintenance records and respond to your query. The process normally takes approximately 5 to 10 working days. Please feel free to contact us on (07 123 456), or email: (_____) if you have any questions. It will be helpful if you have the reference number CRMS (8000012345) handy when you make contact.

Yours sincerely

Name

Position Title

Vehicle Damage CRMS Query (8000012345) Details:

- 1) The date and time (as accurate as possible) of the incident which cause the damage;
 -
 -
- 2) The weather conditions when the incident occurred;
- 3) The speed of vehicle when incident occurred;
 -
 -
- 4) The name of the driver and his / her driver's licence;
- 5) The vehicle Registration number;
 -
 -
- 6) A detailed and specific description of the exact location of the pothole (for example, south of White Road intersection, northbound lane, approximately 250m north from the access of the rest area; or north of Black Road, southbound lane, approximately 80m south of the curve warning sign). Please use (Diagram / basic sketch if you find it helpful)
 -
- 7) Brief description of incident (Diagram / basic sketch of incident)
 -
 -
 -
 -
 -
- 8) Witnesses (if any) – name and telephone number

- 9) Evidence of damages and evidence of the cost to repair the damage
 -
 -
 -
 -
- 10) Your full name and preferred daytime contact number / cell phone number and email address

Please email or post the information to: _____ or PO Box_____.

Letter 2: Customer follow-up; maintenance requirement and liability

Wednesday, 10 November 2017

<Customer Name>

<Address 1>

<Address 2>

<Address 3>

<Regarding: State Highway Claim>

Dear <customer name>,

CRMS Reference:

Following our last correspondence dated (01 January 0001), we are in the process of reviewing our maintenance records and investigating the way this defect was handled.

On behalf of the NZ Transport Agency (the Agency), we maintain the state highway network as required by regulations and specifications. Nonetheless, the wet weather at this time of year makes successful and permanent repair works unviable. To ensure an active approach is undertaken on repair work during winter months and other wet weather conditions, maintenance crews are required to patrol the highway on a more regular basis compared to the summer months. The crews monitor the road condition, including potholes, and either makes the site safe by installing warning signs, or carrying out necessary temporary repair if any potholes, which pose immediate hazard to road users, are observed. Permanent maintenance work is normally carried out in summer as it requires warmer and drier conditions.

(The extreme wet weather occurred on the 1st of September caused potholes throughout the Karangahake Gorge). These potholes had been subsequently filled once the wet weather conditions subsided. Unfortunately, in extreme weather events such as this one, not only can new potholes develop very quickly, pothole repairs often lead to varying results. . Consequently, repaired potholes can quickly re-appear following traffic action. Therefore, the most practicable maintenance approach is to monitor, make-safe the site and fill the pothole as soon as practicable.

As a result, the Agency is unable to provide a guarantee or indemnity on behalf of the Crown. In all but cases of negligence by the Agency and/or its maintenance contractor, damage from road surface incidents is an insurance claim. In the case related to your vehicle damage, the appropriate maintenance records are being checked for evidence of negligence. Any associated liability for your vehicle damage can be determined based on whether the relevant specifications are met.

We will be in contact after presenting our findings and recommendations to the Agency's Maintenance Contract Manager for final review and approval.

Yours sincerely

Name

Position Title

Letter 3: Final response; vehicle damage outcome

Wednesday, 10 November 2017

<Customer Name>

<Address 1>

<Address 2>

<Address 3>

<Regarding: State Highway Claim>

Dear <customer name>,

CRMS Reference

Following our last email/letter, the investigation into your vehicle damage on (dd/mm/yyyy) at (SH2 at Karangahake Gorge) has now been completed.

During the investigation, relevant pavement repair records were reviewed for the appropriateness of the repair method and job response time. It is identified that:

- The potholes at this location were reported (by you) at 11:45am 24 July. Prior to that, the maintenance service provider was unaware of the issue;
- The potholes were subsequently repaired at 1:15pm the next day which met the maintenance contract specification of a 48-hour response time;
- The site was made safe with warning signs at 12:45 the same day which meet the maintenance contract specification of a one-hour response time.
- The repair was carried out using standard temporary repair method. Given the weather at the time, the quality of repair work was appropriate and in line with relevant specifications.

a. Note for author: contract requires defects that will, or have, caused damage or are considered a safety hazard to be managed under the incident response requirements of the contract i.e. responded to within 1hr (higher classification routes) 2 hrs (lower classification routes). If they are potholes that have not developed to this extent then 48hrs is the contract PIP period from the time it has been identified by the contractor or the principal or 3rd party.

It has been determined that the contractor has met their contractual obligations and therefore the NZ Transport Agency is not liable for damage claims Please contact your insurance company for the cost of damage repair.
Or

It has been determined that the contractor has not met their contractual obligations and therefore the NZ Transport Agency will compensate for actual verified costs on behalf of its maintenance contractor. (and will then deduct this sum from monies owing to the contractor?)

There had been suggestions to place warning signs following repair work, nevertheless this “just in case” approach would affect the effectiveness of signs indicating actual problems on the road, therefore cannot be applied (example of responding to any of customer’s suggestions only).

Travelling on road including the state highways will never be completely risk-free and will always require all of us to always be vigilant, keep good distance from the vehicle in front and always drive to the conditions so that we are prepared to expect the unexpected.

Yours sincerely

Name

Position Title