

STATE HIGHWAY REVOCATION: POLICY AND GUIDANCE

Date of issue: September 2021

Objective

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

Context

2. 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).
3. 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).¹ 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).
4. The definition of road includes a street, motorway, footpaths, bridle paths, and any related structures (e.g. bridges) that form part of a road.
5. 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).²
6. 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).

Scope

7. 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

¹ 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.

² 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.

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).

Policy and guidance

8. This section of the 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.

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

9. 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.
10. 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.
11. 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).
12. 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

13. 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.
14. 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

15. 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.

16. 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

17. Waka Kotahi must consult with the following stakeholders prior to taking any decision to revoke a state highway:³
- 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.
18. Where Māori land or interests are potentially affected, specific advice and guidance should be sought from Te Mātangi in Waka Kotahi.
19. 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 Conservation⁴).
20. 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

21. 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.
22. 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.
23. Decisions *should* be informed by local, regional and national plans and strategies.
24. Appropriate skills and expertise *should* be secured to understand and advise on these issues (e.g. relevant local authorities, other government agencies).
25. If the road is no longer required as a road it can be legally stopped.

³ Section 103(6) and (8) of the LTMA.

⁴ The Department of Conservation is also a RCA for roads within national parks and reserves.

Duplicate state highway routes are possible but should be avoided

26. 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.
27. 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

28. 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.
29. 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.
30. 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.
31. 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

32. 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.
33. 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.
34. 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

35. 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.

36. In the event of a transfer of designation, Waka Kotahi *must* inform the Minister for the Environment.⁵
37. 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)

38. 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.
39. 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.
40. 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.
41. Waka Kotahi *must* also review any licenses to occupy⁶ and other agreements (e.g. regarding stock underpasses) and work with the future RCA to agree where licenses or agreements are still needed. If licenses cannot be transferred to the new RCA then replacement licenses will need to be established where required.

Road naming and property addresses

42. 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

43. Limited Access Road (LAR) status will be retained unless there is a conscious effort to remove it. Under the Government Roding 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.
44. 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.
45. 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

46. 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.

⁵ Section 180(2) of the Resource Management Act 1991.

⁶ A legal agreement that allows someone other than the owner (a third party) to use a specific area of the owner's land for a permitted purpose.

Utility Operators

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

KiwiRail

48. 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

49. 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.
50. 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.
51. 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.
52. 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.
53. 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.
54. 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

55. 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

56. 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).
57. An example letter of recommendation is included in **appendix one**.

58. 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.
59. 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.