

Unformed Legal Roads: Road Stopping and Purchase A Guide for Applicants

What is an unformed legal road?

An unformed legal road, or road reserve (commonly called a paper road), is land that is legally held as road but is not currently a formed carriageway.

What is a Road Stopping?

The sale of unformed legal road for private use is a formal legal process whereby the road is 'stopped' taking away its legal status as 'road', and then changed into freehold (fee simple) land, enabling the land to be sold.

Who can apply for a Road Stopping?

Tasman District Council will consider applications for a road stopping from owners whose land adjoins unformed legal road, or where an encroachment has occurred, provided that suitable alternative land is available for road. (Adjoining owners' means owners of properties that are immediately next to the land in question.)

The Council may sell unformed legal road to an adjoining property owner when it determines the land will not be required for utilities, roads or footpaths in the future. A main requirement will be that the adjoining landowner must amalgamate the portion of stopped road with the landowners existing title. No additional titles will be issued for a portion of stopped road.

Applying for a Road Stopping

As a first step, an initial conversation with a member of the Property Team is welcome as they can advise you of specific requirements for your application and provide any general information you may need. This approach can be an informal meeting at the Council offices, or information sent by email, or a telephone enquiry.

Formal applications for a Road Stopping should be made to the Manager Property Services, Tasman District Council. The application should include sufficient information to enable Council to identify the land in question and ascertain your reasons for the request. Examples of information required:

- A completed Tasman District Council 'Application for Stopping of Unformed Legal Road' form (form for completion is attached to this leaflet)
- An aerial photo or plan clearly showing the area you want to be stopped
- Current photographs of the proposed road stopping area
- A current Certificate of Title for your adjoining property
- Information on why you want the road closed

Road Stopping Panel

All Road Stopping applications are considered on a case by case basis by the Council's Road Stopping Panel who meet on average three times per year. In assessing an application for road stopping the Panel will consider such things as:

- The current level of public use and the right of the public to use the land
- Potential future use as a road corridor or roading link, road widening, walkway/cycleway, future services etc

- Public access to reserves, waterways and conservation estate
- Any adverse affects to other property owners in the area
- The implications of changes to the area if the land was to pass into private ownership (e.g. development potential)
- Any affected heritage or cultural sites in the area
- Any significant plants or trees in the area and possible covenants in place to protect them
- Any legal arrangements such as easements that would be required if the road was stopped
- Utilities services

If the Road Stopping Panel concludes that the Road Stopping cannot be approved the applicant is notified in writing of the reason for the refusal and the process ends.

Road Stopping Agreement

If the Road Stopping Panel approves the application in principle Council will enter into a Road Stopping Agreement with the applicant. This agreement will set out the expectations and responsibilities of the applicant and the Tasman District Council. Generally agreements would include a purchase price, costs, a timeframe and any special conditions applying to the Road Stopping.

The Legal Process

Council must follow the correct legal framework in order to process a Road Stopping application. Applications are considered under either the **Public Works Act 1981**, or under the **Local Government Act 1974** depending upon which legislation is relevant to your application.

Procedure under Public Works Act 1981

The Public Works Act 1981 is a relatively streamlined and therefore a quicker process but can only be used where there is no wider public interest in the land in question and where any identified affected parties have given their written consent. An example of this would be where the stopped road is being exchanged for an adjoining parcel of land which will be vested as road, that is "like for like", or where the landowner applicant owns all of the adjoining land and the unformed legal road is landlocked or where an historic encroachment has occurred.

Local Government Act 1974

The Local Government Act 1974 is used where the proposal to stop a road has a wider public interest (or the potential for such) and therefore requires public notification. This involves Council erecting signs on the unformed legal road, sending letters to surrounding property owners, and at least two public notices, a week apart, in local newspapers. Details of the road stopping are made available to the general public for inspection together with the reasons why the road is to be stopped. Members of the public have 40 days to object.

If no objections are received within the time limit the Council may declare the road stopped by Public Notice. Once this has been done the road ceases to be a road and can be sold.

In the event that objections are received the process can become lengthy and would proceed as follows:

- Council must decide whether the objections are justified by holding a hearing in front of a Council committee at which persons who have objected are entitled to be in attendance and their concerns heard.
- Following this the committee will decide whether or not to uphold the objections. If the objections are upheld, then the road stopping cannot proceed and the process stops.

- Council may decide to reject the objections and continue with the road stopping. In this event if the objections are not withdrawn or otherwise resolved the Council must send the objections and full documentation regarding the proposed Road Stopping, to the Environment Court.
- The Environment Court may hold a court hearing, or may be able to arrange mediation to resolve any objections before a hearing.
- If the Environment Court approves the stopping Council will continue with the process to stop the road and sell the land to the applicant.
- If the Environment Court rejects the Road Stopping, the process ends, The Environment Court decision is final.

Timeline

Depending upon the complexity of the individual road stopping the process can take anywhere from one to three years to conclude. The length of time involved is partly due to the specific legislation that dictates how Council must go about stopping the road before it can be sold.

Cost to the Applicant

Road Stopping is a formal legal process which involves a number of costs. These costs can make the stopping of road a relatively expensive process. As a guide the costs can range from several thousands of dollars to the tens of thousands of dollars depending on the complexity of the project. Because every case is different it is impossible to give a definitive guide to level of costs for every case. The Applicant is responsible for paying these costs and therefore should carefully consider this aspect before making a Road Stopping request. Please be aware that the costs **are payable to Council whether or not the Road Stopping is successful.**

As a guide Council has listed below the likely costs the Applicant will need to pay for. This is an example only as there may be additional costs that occur that are not necessarily foreseeable.

- Road Stopping Fee payable to Tasman District Council
- Tasman District Council staff time in processing the application.
- Survey fees - Once the Road Stopping Agreement is signed the Applicant will be responsible for engaging their own Surveyor to provide a survey plan for Council approval before lodgement with Land Information New Zealand.
- Land Information New Zealand fees
- Valuation fees to value the land being purchased
- Legal fees – yours and the Council's
- Cost of authorised person to carry out road stopping process
- Cost of public notification if the Road Stopping is carried out under the Local Government Act (if required)
- Any Court hearing costs and Environment Court hearing costs (if required)
- Road Stopping requests in rural areas are subject to the approval of the Minister of Lands.

Please be aware that the cost of purchasing the land is additional to the costs for the road stopping process.

Valuation of the land

Council will instruct an independent registered valuer who is a member of the New Zealand Institute of Valuers to determine the market value of the legal road being sold by Council. Valuations for establishing the purchase price are based on the added value to the existing title – based on valuations before and after the addition of the land.

Step by step Road Stopping process

We have attached below, for your information, two flow charts which set out the step by step process of Road Stopping under the Public Works Act 1981 and Local Government Act 1974.

Attached, after the flow charts, is a Road Stopping Application form.

Road Stopping Process Public Works Act 1981

Road Stopping Application
received and fee paid

Road Stopping Panel considers
application and makes a decision

Application Approved
Applicant notified

Application refused
Applicant notified

Road Stopping Agreement is drawn up & signed
by Applicant & Council

The process ends

Land is valued

Applicant may discontinue the process here with all
costs incurred to this point payable by the Applicant

Land is surveyed

Consent sought from Minister of Lands for
road in a rural area to be stopped

Gazette Notice published to
declare the road stopped

New Title is issued for the adjoining owner's land and
amalgamated stopped road. Payment for the land and
outstanding costs are paid by the applicant.

