

# SM012 State Highway Controls and Operations Manual

## Part 7 - Consolidated Legal, Statutory, Regulatory Sections

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# 1.0 State Highway Declarations and Revocations

## 1.1 Extent of State Highway Network

State highways may be declared and revoked only with consent of the Secretary of Transport, in accordance with section 103 of the Land Transport Management Act and promulgated by way of a notice in the *New Zealand Gazette*. Note that section 60 of the Government Roding 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Act (formerly the Transit New Zealand Act) that authorised the Board to declare and revoke State highways has been repealed.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.

Section 14.0 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.

## 1.2 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).

## 1.3 Ownership of State Highways

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

1. The GRP Act section 44 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 section 316 of the Local Government Act 1974. However, the Local Government Act 1974 section 316 is unequivocal that except for State highway reserves in former county areas (prior to 1 December 1974), State highway land was vested in the local authority.
2. Therefore, at that time all land within State highway reserves in urban areas previously controlled by a formerly constituted Borough or City was vested in the TLA whose district they are in. Subsequent boundary changes will not have changed the ownership boundary.
3. The GRP Act section 65 allows the NZTA to request a TLA to relinquish the property in any State highway concerned in accordance with section 316 of the Local Government Act 1974. Therefore highway ownership is not a black and white issue.
- ~~3.4.~~ Revocation automatically vests ownership of the revoked road reserve in the TLA.

## 1.4 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. Any part of a superseded State highway becomes a local road (revocations).

## 1.5 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 section 103(5).

## 1.6 Advice to TLA

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

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.

## 1.7 Checklist

A checklist of the issues to be considered when highways are declared or revoked is included in *State Highway Revocation: Policy and Guidance* in section 14.0 below.

## **2.0 Motorways**

### **2.1 Control**

All motorways are under the control of the Board unless it has delegated its powers to another authority under the GRP Act section 62.

### **2.2 Ownership**

All motorways that are State highways are vested in the Crown.

### **2.3 Authorisation and Declaration**

The status of all motorways must be authorised under the GRP Act section 71(1) and an Order-In-Council must be made and gazetted.

### **2.4 Iwi Consultation**

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 section 73 of the GRP Act. The requirements are set out in section 2.9 below.

### **2.5 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).

### **2.6 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 section 79).

### **2.7 Services and Access**

The Board has absolute power to control new or existing services or accesses affected by any motorway, as in GRP Act sections 76, 77, 78, 82, 83 and 84. NZTA policy on services and access is detailed in Part 11: Consolidated Utilities Sections.

### **2.8 Cost of Motorways**

The full cost of constructing and maintaining a motorway shall be a State highway charge unless agreed otherwise, as in GRP Act section 81.

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

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

#### **2.9.1 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.

### **2.9.2 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.

## **3.0 Statutory Framework and Operation Authority**

### **3.1 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.

### **3.2 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.

### **3.3 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).

### **3.4 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.

### **3.5 Specific Powers**

The following sections outline the broad powers contained in the various Acts and amendments that set out the broad requirements and actions to be applied to State highways.



## 4.0 Roothing Powers Act, 1989

### 4.1 Introduction

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

**Table 1: 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 Māori 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

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

## 5.1 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.

**Table 2: Powers and Duties of Authority**

The following table details the provisions of the Act:

Nº	Function	Reference
1	Funding of the land transport system including: <ul style="list-style-type: none"><li>• The National Land Transport Fund and Account,</li><li>• Land Transport programmes,</li><li>• Procurement procedures,</li><li>• LA interests in public transport, and</li><li>• Diversion of excise duty</li></ul>	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

# 6.0 Land Transport Act, 1998

## 6.1 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.

**Table 3: 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

## 7.0 Local Government Act, 1974

### 7.1 Introduction

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

#### Table 4: 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

## 8.0 Public Works Act, 1981

### 8.1 Introduction

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

**Table 5: Powers to be Used by the Board**

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

Nº	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

## 9.0 Transport Act, 1962, Traffic Regulations and Land Transport Rules

### 9.1 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.

#### Table 6: Powers and duties of the Board

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

Nº	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)

## 10.0 Civil Defence and Emergency Management Act, 2002

### 10.1 Introduction

The NZTA is a lifeline utility as defined in this Act and must make a pro-active 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.

### 10.2 Duties Under the CDEM Act

The duties the NZTA must undertake are set out in section 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.

### 10.3 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.

### 10.4 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.



## **11.0 Major Events Management Act, 2007**

### **11.1 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.

### **11.2 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.

### **11.3 Response**

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

## 12.0 Delegations of Powers and Functions

### 12.1 Purpose

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

### 12.2 What Does this Part Cover?

This part covers the following matters:

1. 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 authority to delegate its statutory and administrative powers to staff to provide for efficient and effective management of State highways. Section 12.3 below sets out the general conditions of delegation to NZTA staff.
2. The GRP Act (section 62) empowers any Territorial Local Authority to be able to ask the NZTA to delegate some or all of its powers to the Council to manage matters related to the State highway. Some of these need to be reasonably considered since there is potential for economies of scale, e.g. combining contracts for urban streetlighting and traffic signal maintenance. Section 12.4 below sets out the guidelines for delegation of functions to Territorial Local Authorities

### 12.3 General Conditions of Delegation to NZTA Staff

#### 12.3.1 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.

#### 12.3.2 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:
  - made in writing on a standard instrument of delegation; and
  - 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.

Delegation with respect to any permanent traffic restriction (speed restriction, parking, etc.) shall only be exercised after the Regulatory Group, TLA, NZ Police, Automobile Association (AA) and, where appropriate, the Road Transport Forum (RTF), have been consulted and their views considered.

#### 12.3.3 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.

#### **12.3.4 Absence of System Managers, Maintenance and Operations**

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

### **12.4 Guidelines for Delegation of Functions to Territorial Authorities**

#### **12.4.1 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 section 62 of the GRP Act.

Section 66 of the GRP Act ensures that the NZTA retains full power of control over State highway policy.

#### **12.4.2 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, that is such actions as asset management. In other words, a TLA cannot use a delegation to allocate State highway work to in-house/Council commercial entities.

#### **12.4.3 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.

#### **12.4.4 Procedure for Considering and Approving Delegations**

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

The flow chart in Figure 1 shows the steps to be followed in regard to an application for delegation of State highway functions to a TLA.

#### **12.4.5 Capability Profile**

The request for delegation should be accompanied by a capability profile which has been completed in accordance with the capability evaluation in Appendix G12.

#### **12.4.6 Agreement**

Where it is resolved to delegate administration activities to a TLA, a formal agreement shall be executed. Appendix G12 gives the wording of such an agreement. The draft agreement is to be reviewed by the Group General Manager, Transport Services before it is signed by the TLA and forwarded for signing by the NZTA.

#### **12.4.7 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* in Appendix G12. 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.

#### **12.4.8 Payment to TLA's for Minor Delegations**

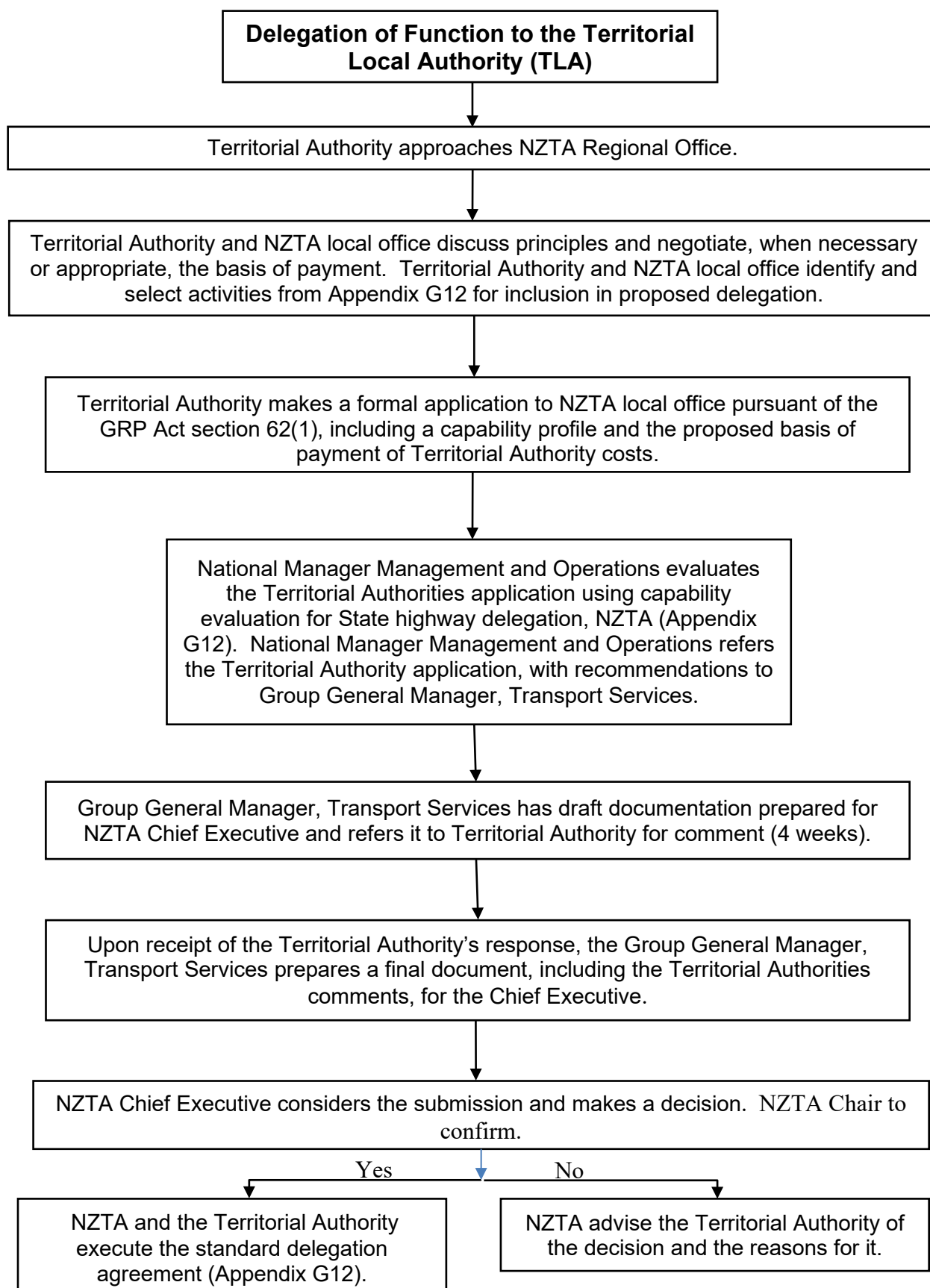
When TLA's seek from NZTA payment of administration fees associated with minor delegations on state highways each case must be assessed in terms of the following factors:

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

#### **12.4.9 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.

**Figure 1: Flowchart Showing Process to Consider a Request to Delegate to a Territorial Local Authority**



## 13.0 Planning, Designations, Operational Board and Bylaw Restrictions

### 13.1 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. Management and updating of designations in district plans.
4. Statutory provisions of limited access control.
5. Bylaw provisions to manage the activities of some highway users.

Other statutory control measures such as temporary speed restrictions, road closures etc.

### 13.2 Responsibility

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

### 13.3 Limited Access Road (LAR) Control

#### 13.3.1 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.

#### 13.3.2 Statutory Authority

The statutory authority for the creation and revocation of a length of State highway to be a LAR is contained in the GRP Act sections 88 to 98.

#### 13.3.3 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.

#### 13.3.4 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 a length of State highway as a LAR, 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* in Appendix G14; and

- each region is required to include its priority listing of length for declaration in the annual plan and business plan as appropriate.

## 13.4 Bylaws

### 13.4.1 Purpose

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

### 13.4.2 Authority to Make Bylaws

The Litter Act section 12 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 section 22AB 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 Appendix G12.

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 National Manager Portfolio and Standards. Recommendations on new bylaws will be made to the National Manager via the Road Safety Team.

### 13.4.3 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/Special Vehicle 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.

### 13.4.4 Review of Bylaws

The following requirements are expected by the Group 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 Portfolio and 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 Portfolio and 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.*



## 14.0 State Highway Revocation: Policy and Guidance

### 14.1 Objective

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

This process document includes both mandatory requirements and recommended practices in the decision-making process. It is important to note that the requirements are predominantly derived from legislative provisions and the policies of the NZTA developed to meet those requirements.

### 14.2 Scope

This policy and guidance applies to 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).

### 14.3 Context

State highways works are changing the highway network regularly and it is necessary to use the statutory processes to ensure that the network is managed appropriately to match the Government’s objectives.

Where there are residual highway lengths after works, Section 103 of the Land Transport Management Act 2003 (LTMA) empowers the NZTA, with the consent of the Secretary of Transport, to revoke a State highway. Revocation is the statutory process to remove the State highway status from a section of highway.

A road may be declared to be a State highway under section 103 of the LTMA. Revocation of a State highway constitutes the road as a “local road” for the purposes of the Local Government Acts and any other legislation. This will in effect transfer ownership, control and funding responsibility of the road to the TLA, or potentially multiple Authorities where the section of State highway to be revoked crosses council/jurisdictional boundaries.

The definition of road includes a street, motorway, footpaths, shared paths, and any related structures such as bridges, culverts, tunnels and retaining walls, to name a few, that form part of a road.

Revocation decisions are important for the NZTA and the affected TLA(s) 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 road is fit for its new purpose. The revoked road will probably need to accommodate slower speeds and align with the character of the locale, particularly for urban areas. 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 would be at the business case stage of an improvement project. 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.

The implications of revocation extend beyond those of a financial nature. Tools such as the 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, such as improving the “place function” of the road through the town centre. The future focus should also be supporting progress towards wider Government objectives like contributing to New Zealand’s carbon zero objective.

## **14.4 Revocation is to be Recognized and Factored into the Early Stages of the Improvement Project**

### **14.4.1 Indicative/Optioneering Phase and Detailed Business Case Stage of Improvement Project**

If revocation is to be included in a project, then the budget for the improvement project must make provision for the key stages of revocation; namely consultation, investigation and ensuring the former State highway is fit for its new purpose at handover.

The NZTA 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.

When the function of a road changes 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 must be recognised and incorporated into the project plan. Discussions with the TLA can also identify whether there are any aspirations the TLA has for works they would be prepared to fund to be included and use the value of incorporating it in a bigger contract. If they choose to do so, use the Cost Sharing Contract document in Appendix G17.

During development of the business case for the improvement project, the NZTA must agree with the TLA on the condition of the road assets and whether the proposed asset management programme is likely to be adequate to hand over the road in reasonable condition. If not, there will need to be budgeting to allow for any maintenance brought forward to be agreed and implemented in current programmes.

### **14.4.2 Early Planning for Revocation Decisions is Important**

The project plan will have to recognise the matters relevant to revocation as part of the business case process for the 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, if not done or incomplete, and settle any outstanding land issues
- review road naming and changes to property addresses
- review, update (where required) and transfer of any third-party agreements, designations and consents, including KiwiRail Deeds of Grant
- review, update (where required) and transfer of any bylaws or other controls; and
- budgeting for ongoing maintenance of revoked state highway section.

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

### 14.4.3 Importance of Documenting the Process and Key Decisions

Ongoing, clear and detailed documentation to be in place to ensure that:

- the NZTA 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 the TLA to 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 and the transfer of any Resource Management Act 1991 designations and resource consents

## 14.5 Matters Relevant to the Substantive Revocation Decision

### 14.5.1 Consultation

Waka Kotahi must consult with the following stakeholders prior to taking any decision to revoke a state highway (see sections 103(6) and 103(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 and Property teams.

While it is mandatory to consult with the above list of stakeholders, section 103(7) of the LTMA does not limit consultation with affected parties, so the NZTA should also carefully consider consulting with other people, including owners of adjacent land, transport groups and local communities, if affected. Note that the Department of Conservation is also a road controlling authority for roads within national parks and reserves so may have an interest in taking residual road sections in parks and reserves, although not directly through this process as the LTMA does not include it.

While the NZTA must consult with these mandatory stakeholders as part of its revocation decision process, it is not required to reach an agreement with them nor obtain their consent.

### **14.5.2 Adopt a Whole of Network Approach to the Decision**

The NZTA will have to adopt a strategic whole of network approach to its revocation decision as the outcome may involve significant access changes for the local community. Consideration of the implications for all road users, including cyclists, pedestrians and public transport users, is also important.

Waka Kotahi must consider the revocation decision within the context of connecting the surrounding road hierarchy, surrounding land use access requirements, and access to multi-modal transport networks and use the ONF along with the Network Operating Framework to assist this purpose.

### **14.5.3 Duplicate State Highway Routes are Possible but Should be Avoided**

The NZTA Board has directed that the NZTA should revoke residual highway sections 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, the NZTA must undertake an evaluation of a State highway's network function, subject to the revocation proposal and where a new road is to be constructed. Any decision that selects parallel State highway routes as the outcome should be confirmed with the Board.

## **14.6 Matters Relevant to an Effective Handover of the Road**

### **14.6.1 Ensuring the Road is “Fit for Purpose” at Handover**

It is NZTA policy to 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, the NZTA should work with the TLA(s) early in the project to identify the fit for purpose standard for the revoked section of State highway at the time of handover. The following approach is recommended to 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. The approach can include 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 TLA is not possible, including efforts to escalate to senior or executive management levels, the NZTA should still use the criteria above to ensure that the revoked road is in its view fit for purpose at the time of handover.

Any works to change the road beyond fit for purpose, especially major improvements, must not be funded by the project and should be included for funding in the NLTP only if those works meet the funding thresholds that apply.

### **14.6.2 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 project are not unintentionally applied to the section of 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 applications for the State highway project should otherwise only refer to changes to the section of state highway to be revoked where these are required to mitigate the direct, adverse effects of the project. Such changes must be part of the scope of the project.

If the NZTA and the TLA(s) 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.

### **14.6.3 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 either State highway or motorway purposes, then the NZTA must agree with the TLA(s) and initiate the alteration/transfer/uplift process for the designation and consents for the sections of highway that are to be handed over.

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

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

### **14.6.4 Land and Property Matters (Encroachment and Licences to Occupy)**

Before handover, the legal basis for the State highway must be properly established by ensuring that it is within the designation, if there is one, and within the legal boundaries established for it. This will ensure that revocation and transfer of control of the road to the TLA do not inadvertently pass on legal issues that impact on the ability of the TLA to manage the road in the future.

In the case of the road corridor encroaching onto private property, this should be resolved to ensure the legality of the road. The legalisation process can take considerable 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 records for these need to be part of the information transferred to the TLA.

The 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 legal survey of the boundaries of the section of State highway to be revoked, and lodge changes with LINZ. Identify these issues early and ensure remedial actions are identified in the plan for handing over the road.

The NZTA should review any licenses to occupy and other agreements with the TLA, especially such agreements for stock underpasses, since a licence to occupy is a warrant for a third party to

use a specific area of the road reserve for a permitted purpose. Licenses will need to be transferred to the TLA, who can then action replacement licenses for the Council, if required.

#### **14.6.5 Road Naming and Property Addresses**

The NZTA should prompt the TLA to determine that the road has a legal name once it is no longer a State highway. This is necessary to remove any chance of confusion for the emergency services as lives may literally be at stake. This will also allow the postal service to update postal addresses or delivery arrangements to address any issues triggered by the revocation. Only the TLA has the right in legislation to name roads.

#### **14.6.6 Limited Access Roads**

In accordance with legislation, limited access road (LAR) status will always be retained unless there are legal steps taken to remove it. Under section 96(1) of the GRP Act, when a State highway is revoked but the status of that road, which has previously been declared a LAR, is not changed, it will retain its LAR status under the administration of the TLA, using sections 346A to 346J of the Local Government Act 1974 for future management.

If a State highway has been declared a LAR, the TLA may want the NZTA to remove all or part of its LAR status under section 88 of the GRP Act as part of the preparations for handover.

If LAR status is to remain and the NZTA is to retain land outside the road boundary but adjacent to the road corridor, the registered crossing places must be properly established and identified. This will enable the land to have legal access when the road is no longer a State highway.

#### **14.6.7 Bylaws**

In accordance with legislation, the status of bylaws will always be retained unless there are legal steps taken to revoke or change them. The NZTA must identify and should review the existing bylaws with the TLA and agree any actions, where required. The NZTA will transfer, particularly, any speed limit bylaws or any other bylaws such as clearways or stock control, to the TLA by agreement.

#### **14.6.8 Utility Operators**

The NZTA must notify affected utility operators of the proposed revocation, amending and transferring any utility agreements and records to the TLA.

#### **14.6.9 KiwiRail**

The NZTA must identify any KiwiRail Deeds of Grant for the likes of level crossings and access to rail land, including bridges over or under the railway, affected by the revocation and advise the TLA of the need to transfer them. The NZTA will need to notify KiwiRail of the transfer of any agreements or any other issues raised by the revocation and the transfer of assets.

#### **14.6.10 Maintenance and Works Required Prior to Handover**

The NZTA must not defer any planned maintenance or renewals on the section of the revoked road without the agreement of the TLA. This could take account of changes in planned maintenance and renewals as a result of reduced traffic on the highway to be revoked once the new road is open but before the old highway is transferred.

The NZTA should not direct additional maintenance funds to the highway to be revoked to raise its current standard of maintenance, outside of its normal annual budgets or programme for the highway's maintenance.



The NZTA must agree with the TLA when and how the maintenance handover will be handled, whether it will be in full or in stages. Maintenance before revocation is funded from standard State highways operations budgets unless responsibility for maintaining the road is formally transferred to the TLA 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 TLA to complete the work after revocation with funding provided by the NZTA under a formal agreement.

Once the State highway is revoked, funding responsibility is also transferred to the TLA and therefore any ongoing NLTP funding will be provided at the appropriate FAR for the activity.

#### 14.6.11 Timing of Handover

Consideration needs to be given to how the revocation can be timed to suit the needs of the TLA, to align with the Council's Annual Plan process and that the lack of funding does not unduly delay the handover. The notice to be published in the Gazette regarding the revocation decision, to be found in Appendix G14, will specify the date revocation will take effect, so there is flexibility to accommodate timing preferences where appropriate.

### 14.7 Consent Must be Obtained from the Secretary of Transport and the Decision Gazetted

The LTMA requires the NZTA to obtain consent from the Secretary of Transport to revoke a section of State highway. Consent is sought through a letter to the Secretary of Transport signed by the Chief Executive of the NZTA which requests that the section of State highway be revoked and that the statutory requirements have been met. The statutory matters and information to 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 are affected and especially if Māori land is affected;
- a statement that the requirements of section 103(8) of the LTMA have been met, that there has been consultation with relevant local, regional, and central government authorities;
- due to further statutory change to section 103(8) in 2020, if the change is in the project area for a specified development project belonging to Kāinga Ora–Homes and Communities a statement is required covering the requirements for consultation with that Agency and subsequent outcomes; and
- the proposed timing of when the revocation is intended to come into effect.

An example letter of recommendation is included in Appendix G16.

If the Secretary of Transport gives consent, the NZTA 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 G14.

## 14.8 Other Guidance and Out of Scope Issues

### 14.8.1 One Network Framework

Normally the revocation of a length of State highway involves lessening the importance of the residual road in the road hierarchy and the works proposed to make the residual local road “fit for purpose” will involve making it more community friendly. Extra guidance as background to the can be found in the section on the *One Network Framework*, which can be found on the NZTA website.

### 14.8.2 Intervention Hierarchy

The intervention hierarchy for dealing with residual highway lengths needs to be considered as far back as the business case approach so that consideration of revocation is considered as more than just a contingency item. Consideration of alternatives, ranking of cost options and existing and likely residual risks should be given in order to develop the hierarchy of interventions needed to make the residual road lengths fit for purpose.

At each major hold point in the project the consideration of the intervention hierarchy needs to be refined and updated as costs become more certain.

### 14.8.3 Policy Regarding Transitional Funding Assistance for Maintenance of Revoked State Highway

Investment and Finance have a policy in place to deal with issues of financial hardship for a TLA taking on a substantial length of redundant State highway as the result of a revocation. The policy involves an adjustment to the Financial Assistance Rate (FAR) to take account of the impact. This is a matter that the TLA should arrange themselves through appropriate NZTA contacts and is out of scope for the project team.

### 14.8.4 Process and Requirements to Close a Road That is No Longer Required

In determining what sections of the redundant State highway need to be retained and which sections are no longer required to be public road, there may be sections of highway that should be closed. The closure of a public road involves a statutory process.

For the NZTA this is set out in section 116 of the Public Works Act 1981 (PWA) and requires an approval from the Minister of Land Information, which will be obtained via Land Information NZ (LINZ). It is recommended that the approach to LINZ is managed by the Property team through established channels and therefore the project manager should consult with them early so that they can include this in discussions with landowners.



## 15.0 Coroner Inquests

### 15.1 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.

### 15.2 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.

### 15.3 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.

### 15.4 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.

### 15.5 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.

## 15.6 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.

## 15.7 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.

## 15.8 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.

## 15.9 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.
- Prepare a response, even if the recommended action:
  - is inappropriate, for example a recommendation for a new style of road sign or marking where the NZTA has no direct control for the action;
  - is impossible, for example is beyond the statutory powers of the NZTA under any legislation or regulation; or
  - has undesirable consequences, for example it would create another unmitigable risk or hazard.

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 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.

## 16.0 Traffic Control Devices and Pavement Markings

### 16.1 Legal Requirements

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

### 16.2 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:

- (a) *Land Transport Rule: Traffic Control Devices 2004*, with its amendments.
- (b) *Manual of Traffic Signs and Markings, Traffic Control Devices Manual and relevant Traffic Notes.*