Absolutely Positively
Wellington City Council
Me Heke Ki Pōneke

Proposed Half Cost Path Policy Review

Summary of submissions and officers' response

Introduction

The Council has reviewed the Half Cost Path Policy and proposed the following five reasonably practicable options for public consultation:

- Option 1 - No change
- Option 2 - Targeted rates
- Option 3 - Invoice the property owner for half of the cost of maintenance
- Option 4 - Revoke the policy to allow private property owners to take over full maintenance responsibility
- Option 5 - Revoke the policy to allow Council to take over full maintenance responsibility

Public consultation was undertaken from 26 February to 27 March 2024 through the Council's Let's Talk page. A Statement of Proposal, along with specific consultation questions, were published on the Let's Talk page for the consultation.

Targeted consultation was carried out by sending over 1000 letters (with printed submission forms included) to identified property owners affected by the policy based on current Council data. Completed submission forms received by the Council have been entered into the Let's Talk platform.

To provide a broad picture of the public opinion on the review, officers have also carried out a survey using the Research and Evaluation Team's *Capital Views* research panel with the same questions from the submission form.

Number of submissions and survey responses received

We received 304[1] submissions on the Half Cost Path Policy review (Review), with 268 from affected property owners or occupiers (about 88%), 27 from the general public (about 8.9%), and nine respondents who selected 'not sure' (about 3%). 301 submissions are from individuals and 3 submissions are made on behalf of an organisation.

64 submitters requested to make an oral submission to Councillors. 42 submitters attended oral hearings on 2 May 2024. Their views have been considered along with the written submissions.

We received 845 responses from the panel survey. In this panel sample, 679 (80%) of respondents did not own or occupy a property served by a half-cost path, 58 (7%) were affected property owners, 18 (2%) rented an affected property and 93 (11%) were unsure about their situation.

[1] Two submissions have not been included due to their late arrival on 18 and 22 April respectively.

The summary of the submissions and the panel survey results are presented separately in this report as follows.

Submissions received on consultation questions

Q1- Are you aware of the Half Cost Path Policy?

271 out of 304 submitters answered this question.

- 239 submitters answered 'yes'.
- 32 submitters answered 'no'.

226 submitters answered the follow-up question 'What do you know about the Half Cost Path Policy?'. There are general themes from their answers. Many submissions cover multiple themes. For administrative efficiency each submission is included in one dominant theme only.

- About 80 submitters are aware of the 50/50 percent cost sharing arrangement between the Council and the property owners.

  - ✓ *That council currently pays 50% towards the cost of maintaining many paths.*
  - ✓ *Costs are shared between home owners and council for paths on council land leading to otherwise inaccessible homes.*
  - ✓ *The policy is for a 50:50 split for pathway maintenance for pedestrian paths on council land that serves 3 or more properties.*
  - ✓ *Foot path maintenance/replacement costs are 50% shared cost with the council with the remaining 50% cost shared with the households sharing the access.*
  - ✓ *The current policy shares the cost of path maintenance equally between the council and the households it serves. The proposed change would shift the cost entirely to the households.*

- About 68 submitters state that they have only learned about the policy from the review process and their knowledge is limited to what has been provided for the consultation.

  - ✓ *What was in the NZ Post article and then I received a letter when I returned home from work.*
  - ✓ *What you have sent us. Was the first time I was aware of this. We have done our own minor repairs!*
  - ✓ *Only what is stated in letter to me dated 22 February 2024.*
  - ✓ *I only became aware of it when I received this letter and only know the information provided by WCC in the letter as well.*
  - ✓ *I have been informed about the half cost paths policy from the Council's consultation document. It is germane that although I have owned my house on Upland Road since 1986, I was unaware of the policy until the Council made its current proposal to revoke.*

- About 33 submitters mention that they know the information registered in their LIM reports or have previous experience relating to maintaining half cost paths.

> ✓ *I have had experience with this policy when the pathway access to my house was repaved.*
>
> ✓ *Yes, this is outlined in the LIM report for our property.*
>
> ✓ *When we bought our property the LIM stated Council's policy of contributing up to 50% of the competitive asphalt pavement and standard handrail maintenance costs for the high/low access path serving the property and two neighbouring properties.*
>
> ✓ *My neighbours and I accessed it when we refurbished our shared path some years ago. The policy worked well for all of us.*
>
> ✓ *I know from this consultation and from the LIM for our property that the Council will pay 50% of the cost of maintaining shared access to our property across Council owned land.*

- Around 27 submitters criticise the Council for not maintaining the path or trying to renege on the responsibility of this service.

> ✓ *The Council has mismanaged its spending for years and is in debt. Rather than stop spending frivolously, it plans to continue charging the taxpayer. Stop wasting money & raising rates. Cut the vanity projects, fire some staff & fix the pipes.*
>
> ✓ *The council propose to no longer meet half the costs of maintaining the path up to my house.*
>
> ✓ *WCC is looking at reneging on existing responsibilities to maintain and undertake remedial work for footpaths and related structures on council property, and impose full costs on homeowners that have no other access options.*
>
> ✓ *That there is nothing wrong with the existing policy. The Council has decided that after the policy working well for more than 80 years, it's time to try and shift the cost to property owners because its "difficult to administer" !!!!!!*
>
> ✓ *That the council is trying palm off costs to ratepayers in a poorly thought-out attempt to gain money. This is going to be way more trouble than it is worth, and will likely cost the council in the long run, and endanger peoples safety.*

Q2- If you are a property owner or occupier served by a half cost path, what is the most challenging matter in relation to the maintenance or renewal of the half cost path?

252 submitters answered this question. There are some general themes from their answers. As above, each submission has only been considered for one key theme for administrative efficiency.

- About 60 submitters state that dealing with the Council in relation to the maintenance or renewal of the half cost path is the most challenging matter. Some of these submissions also cover the lack of maintenance work on the path by the Council in the past, the Council's current proposal to review the policy, and maintenance work on banks and retaining walls.

  - ✓ *The fact the path hasn't been maintained in the 17 years that we have owned the property other than us (property owners) maintaining it. It requires work to restore it to a reasonable condition due to erosion, additional developments that have undermined it.*
  - ✓ *The most challenging matter is the Council's attempt to renege on its maintenance responsibilities under the current policy, particularly within the realm of retaining.*
  - ✓ *Once WCC extricate themselves from responsibility there is nothing stopping them from demanding 'gold standard' remediative work on paths or retaining as they have no financial liability anymore.*
  - ✓ *Council haven't paid their 1/2 of our path repair. Aug 2022 a slip occurred on the council road reserve supporting the path. EQC awarded us 1/2 the repair cost. Council won't pay, say no council land there now. True, it fell on the road! You took it away!*
  - ✓ *Getting the council to respond to matters relating to retaining and maintenance, particularly the erosion of the road reserve above and below the path. We have had several slips on road reserve that the council has done nothing to mitigate or prevent.*

- About 43 submitters state that the costs related to the maintenance of half cost path are the most challenging matter.

  - ✓ *Cost, design and liability.*
  - ✓ *Unexpected costs which could be substantial.*
  - ✓ *I don't have the money for either half maintenance and definitely not full maintenance.*
  - ✓ *Money. I cannot afford to bear the cost of a full share of the path maintenance if it is not subsided by Council. I have a very low income - for which I get rates rebates - and cannot pay more!*
  - ✓ *The cost of maintenance and the fact that I do not own the land I'm supposed to maintain. What worries me is not a regular maintenance of the site but the fact that if for example piping breaks under the site this will become a cost for the house owners.*

- About 44 submitters state that coordinating with relevant neighbours is the most challenging matter. Some submitters have had to complete the maintenance work without recovering costs from the neighbours.

> ✓ *Co-ordination with other owners.*
>
> ✓ *The fact that you need to agree with multiple property owners. This model is never going to work and is inherently fraught with the challenge of trying to get almost 300 groups of people to agree on costs that most think the council should cover anyway.*
>
> ✓ *Not all of the property owners reside ie some are rental properties and in the past there has been a level of disinterest in any remedial work on maintenance. I think co-ordinating repairs in the future will be challenging.*
>
> ✓ *Obtaining a consensus between other effected homeowners to carry out maintenance and no specific framework to work through. High upfront costs also.*
>
> ✓ *The most challenging aspect is agreeing with other neighbours when work is required to our shared path and how to resolve issues where one party wants to do the work and another does not want to - plus finding funds to cover the expense of any such work.*

- About 39 submitters state that the most challenging matter is to organise the maintenance work by themselves. Some submissions include the nature of the maintenance work or physical inability to carry out work.

> ✓ *Finding someone to do the work.*
>
> ✓ *Limited physical capacity to maintain the pathway - age related.*
>
> ✓ *Understanding what is required and when - engineering complexity and suitable contractors.*
>
> ✓ *Lack of clarity especially around retaining walls that support paths and categorisation of paths and walls.*
>
> ✓ *We are worried about the retaining of the area in front of our house and in front of number 82, which is above power lines and a heavy use road that double decker buses go down. This bank is in front of our house is on road reserve. There has been a history of complaints to the Council about the bank (including in 1974, 1978, 2007, twice in 2008 and in 2015, 2020 and 2021). Little has been done to assess the condition of the bank and remedy the long history of slips. The planting on the bank has been done by the Council, with the removal of a tree in 2017 most likely contributing to the issue. The Council policy team confirmed to our neighbours that this area remains the responsibility of the Council as road reserve and we urgently request that the Council assess this bank before another slip occurs, blocking a main road and compromising our property and the half cost path.*

- Ten submitters state that there are no challenges at all with the current policy.

> ✓ *There have been no challenges relating to the maintenance or renewal of the half cost path our house has access from.*
>
> ✓ *There have been no challenges for me and my neighbours to date but I guess it could be an issue if one or more property owners is unable to afford the cost of repairs at a given time.*
>
> ✓ *No problem with our current shared half cost path. We happily pay our half share for maintenance. Being owner occupiers and responsible Wellington citizens, we believe in doing our part as long as it's fair and reasonable.*

- Four submitters state that the most challenging matter is the inability to get insurance for the path.

> ✓ *Liability, Insurance, Coordination with Partners.*
>
> ✓ *What happens if there is a major slip? Can we get insurance for property we don't own? Would we have to fork out money we don't have to access our property?*
>
> ✓ *In the case of an earthquake, we will not be able to repair the access due to the cost. Also, we cannot get insurance on this path as we do not own the land.*
>
> ✓ *Ordinarily the property owner would purchase insurance to cover unforeseen events affecting all aspects related to the continued living at your house. However, because we do not own the land underneath the half cost path, this solution is not available to us.*

Q3- What option do you support for the review of the half cost path policy?

This was a compulsory question. There were several submitters who did not select their preferred option and officers had to select an option to manually enter the information to the system. Officers have chosen Option 1 (no change) for this purpose. Overall, number of submitters for preferred options are listed in the following table and themed reasons for the preference of each option are discussed afterwards.

Preferred option	Number of submissions	Percentage
Option 5: Revoking policy – the Council takes full responsibility	131	44%
Option 1: No change	110[2]	37%
Option 3: Invoice for half costs	30	10%
Option 2: Targeted rates	20	7%
Option 4: Revoking policy – owner takes full responsibility	10	3%

[2] It is noted that officers chose this option for 9 submitters to progress with the entry of their submissions as they did not choose any option.

Option 5 (Revoking policy – the Council takes full responsibility)

As indicated in the table above, this is the most preferred option by submitters. There are some general themes for the reasons provided.

- About 37 submitters state that the Council owns the land, hence the Council should take the full responsibility to maintain and remediate the half cost path as part of the maintenance of the road reserve.

  - ✓ *WCC owns the land. An encumbrance allows us to access it. Any policy statement must be subservient to legal ownership (and therefore, responsibility). So the policy as it stands, or any change to it, has no consequence.*
  - ✓ *The Council own the land, therefore they take the full responsibility.*
  - ✓ *If it is on council land then it is council property and therefore council responsibility. The alternative would be to transfer council land over to the private property owners. The physical nature of Wellington, with hills and access difficulties means the requirements and solutions differ to many other cities. It comes with the territory.*
  - ✓ *The paths lie on Council land, it is used by more than the occupants at the address. In our case the path is also used extensively by pedestrians that do not reside at any of the properties it serves as well as organisation such as Predator Free Wellington.*
  - ✓ *The council as a whole provides services and access to the general public/ratepayers on the land owned by the council. Targeted costs for something as fundamental as access to a private property should not have to be covered by the private land owner for access over public land. This responsibility should be covered by the council as they receive the benefit of full rates from there being access to the property in the first place. In principle, targeted costs for a small subset of a general population are fairer and more palatable if the general population covers those costs, as overall the impact is minor in that case, whereas the impact to the targeted population may be overbearing if they are required to cover that cost. As a comparison, think of the cost of NZ EQC Levies. If these were targeted, then the populations of Wellington, Hawke's Bay and Canterbury would be burdened with higher costs, rather than the lower average cost if the whole of NZ covers the total cost. Ref: https://www.nzherald.co.nz/business/eqc-cap-rise-to-see-aucklanders-subsidise-wellingtonians.*

- About 36 submitters state that this option is the most efficient, fair and equitable way of going ahead.

  - ✓ *Option 5 provides transparency on responsibilities, is fair as treats paths no differently to roads (particularly cul de sacs), and is administratively simplest. the costs will be significantly smaller than road costs, yet seem to be the drive behind. The Council's intent is seeking to shift responsibility to owners.*
  - ✓ *Best solution is for council to take full ownership of half cost paths. This will eliminate the issues that council currently has around absentee or unreasonable owners who refuse to pay their share.*
  - ✓ *A fair and equitable policy. Council provides public access to all properties. Council has contractors doing this type of work so can efficiently provide the maintenance. Provides clarity of responsibility. Simplifies obtaining agreement to get the work done.*
  - ✓ *1) There is an arbitrary quality to the notion that the services to some houses are maintained by council right up to the property border if that property is served by a road but not if that property is served by a path. 2) Policies that put the onus on the property owners will result in heated disagreements, e.g. a neighbour and I tried for years to come to an agreement about replacement of the fence separating our properties but came to a stalemate. The result is that things have been left as is, with a rusty broken fence waiting to collapse into my neighbours property from the terraced elevation of my own property. 3) I do not see how full responsibility for repairs can be directed to the property owners if the property owners do not own the land that accommodates the path. Is this land to be gifted to the property owners? I don't think so.*
  - ✓ *We support this option particularly because of the proposal that supporting structures are added to the current policy. This is because with supporting structures added the policy will be unaffordable for us in our remaining lifespan on a fixed income. We could become trapped because if there is a significant problem with the path we will be unable to sell the house to pay for the costs of fixing the path because no one will want to buy the house because of the problem with the path.*

- About 24 submitters state that half cost paths should be treated the same as other footpaths in the city.

> ✓ *We maintain roads and associated pavements without extra cost. We maintain thorough paths. Why are pedestrians second class.*
>
> ✓ *We don't see this as any different from other assets on council land around the city that are more used by people in the immediate vicinity but still able to be used by the general public. A good example are footpaths that serve a cul de sac for example. Just because the few houses in the cul de sac get the most benefit from those footpaths, the footpath is a shared asset in the public sense in that it is a public space and people can choose to walk on it if they want to. The ratepayers have no control over the access to half cost footpaths, as any other footpath in a public space and any public person can use them, so the public do benefit from them. For example, we get kids playing on our footpath from the general neighbourhood as it has a slope to it and they go down on their bikes etc. Hence, it is a strong argument for the council to manage and maintain these as they are on council land as all general ratepayers benefit from using these.*
>
> ✓ *We pay rates for a reason - this is an example of that reason. If you expect tax payers to pay more, reduce the rates they're already paying and stop hiking them so much so often.*
>
> ✓ *It's a public path with pedestrian access not just for residents, anyone has the right to walk up and down it. Therefore Council should take full responsibility like a normal public path. For homeowners to have any maintenance responsibility it would need to be a private access way, only for the sole use of the residents and signposted this way. We have observed that many other non-residents including school children use the Upland Rd half cost path.*
>
> ✓ *All of these options are problematic in terms of their operation and equity for rate payers. Properties in Wellington are in a unique topography. I believe the council has a duty to maintain all infrastructure beyond the private home ownership boundary. Trying to get people to agree to this will be highly stressful and will have a detrimental impact on people's wellbeing. Not to mention health and safety if as a result of the changes nothing gets done.*

Option 1 (No change)

This is the second most preferred option chosen by submitters. The reasons given by submitters can be largely categorised into the following themes.

- The majority of submitters who chose this option (about 48) state that the status quo is a fair option. Some cite that as the Council is the landowner, it should contribute to the maintenance. Some cite that the other options do not solve the problems. Some cite that the path is used by multiple parties.

> ✓ *The current approach allows the Council to ensure maintenance is completed, providing access to all households without relying on individual households. The additional burden imposed by the Council failing to meet its contribution is unreasonable upon households who purchased their property informed by the policy as it stands.*
>
> ✓ *We have 5 key pou which we believe support the established policy and show that the change would be unwise and unjust:*
>
> *(i) Mandate, deficient consultation*
>
> *(ii) Council's proposed course of action is wrongful and inequitable*
>
> *(iii) The change may worsen the situation it seeks to correct*
>
> *(iv) The 'like for like' policy is unclear and potentially unaffordable*
>
> *(v) Information is missing or unclear; practicalities do not seem to have been thought through*
>
> *(vi) There's potential to harm individuals, whānau, communities and the city itself.*
>
> ✓ *Although I believe Council should take full care of these paths I can't see this happening in the present financial climate so staying with the status quo seems the best option.*
>
> ✓ *My preferred option is Option 1 (no change), but there obviously does need to be changes in the way the policy is administered. To start with – more proactive planning and publicity. The Council has a civic role to provide its residents with the tools to help them look after this city and its streets and pathways together. This "Half Cost Path" policy is a tool to enable that. The Council divesting itself isn't.*
>
> ✓ *This policy is well established and apart from Council bureaucracy at times works well, and it's an appropriate sharing of costs and responsibilities.*

- About 32 submitters state that the option is an agreement between the Council and affected property owners. It is unfair that the Council reneges on its obligations. Revoking the policy would lead to those paths deteriorating in conditions.

> ✓ *The revocation of the policy will likely result in poor outcomes to the maintaining these pathways which are in many significant suburbs. These are also part of Wellingtons pedestrian network, which we would all like to see grow.*
>
> ✓ *I can understand that the Council wishes to be rid of this historical policy and remove the financial burden from themselves. Property owners would likely prefer Option 5 and that the council takes up 100% responsibility. I support option 1 as this is the arrangement outlined in the LIM report that we based our decision to purchase the property on. I don't see that Targeted rates would work, as what would the budget be to be apportioned out to the property owners' rates? I wouldn't be happy about paying targeted rates for work that doesn't happen. Without a rational and justified reason to change the policy, the policy cannot be changed.*
>
> ✓ *I strongly oppose any changes to the agreement I signed up to when I bought this house. Options 2 and 3 are too uncertain, give property owners little control. Option 4 is blatantly unfair to owners. Also, the use of the word 'allow' is insulting, you mean 'force' or 'require'. Option 5 would be great but can't see the Council agreeing to that.*
>
> ✓ *The current approach allows the Council to ensure maintenance is completed, providing access to all households without relying on individual households. The additional burden imposed by the Council failing to meet its contribution is unreasonable upon households who purchased their property informed by the policy as it stands.*
>
> ✓ *Half Cost Path arrangements are revealed at purchase through the due diligence of purchasers and not unreasonably given the duration of the policy are expected to be consistent for the life of the dwelling. I.e. they are factored into both purchase budget and anticipated future maintenance/replacement costs by the homeowner. To simply revoke the shared responsibility model to get the liability off the WCC ledger is manifestly unfair to rate payers who entered into an agreement they understood to be enduring (and pay rates for).*

Option 3 (Invoice for half costs)

This is the third most preferred option, and has been chosen by 30 submitters. The reasons for choosing this option given in these submissions are largely within the following themes.

- About 13 submitters state that Option 3 is a fair option which allows for sharing responsibilities.

> ✓ *It's the most fair option. Increasing rates for maintenance of paths elsewhere is unfair. Many households will have difficulty meeting additional cost of maintenance that does not affect them.*
>
> ✓ *A council should be responsible for providing footpaths for all housing and contribute at least half the cost. The invoicing option means that owners pay only for costs related to the paths around their own property.*
>
> ✓ *This would seem a fair approach. General rates covering Council Health & Safety responsibilities and work undertaken and 'relevant' property owners then being invoiced by the Council, and fully responsible for their half share.*
>
> ✓ *Splitting the costs acknowledges that the property owners have some responsibility for maintaining the path, as does WCC as the land owner. Invoicing the owners reduces the risk that one owner won't pay.*
>
> ✓ *We are prepared to meet part of the cost of essential works. We discussed this with our neighbours on the shared path and are in agreement. Before adopting this option there is maintenance work required to bring the path to a safe and reasonable standard*

- About 12 submitters state that Option 3 will allow easier and faster organisation of the maintenance work.

> ✓ *Current state means that one property owner can halt repair work, which is not fair on the other affected properties. Moving to invoice means that all affected properties share the cost fairly. Recovery of non-payment can be pursued in a similar fashion to non-payment of rates. Having court proceedings arrive for non-payment would shift the mindset from less generously-minded property owners thinking only about their costs. Bottom line is that if you share a path with your neighbours, you should pay for its upkeep, or move.*
>
> ✓ *I find it very difficult to get quotes from tradespeople to carry out work such as resurfacing paths so I would prefer the Council to carry out the work and then invoice me for half the cost as they have all the necessary equipment etc and the experience with such paths.*
>
> ✓ *This provides clear expectations and obligations for both parties.*
>
> ✓ *This would allow for faster remedial work to be taken, and a fixed per cost per incident.*
>
> ✓ *This will allow the paths to be maintained to a safe standard without as much need to involve neighbours who may not agree. Furthermore the council engineering team have more experience in path maintenance than individual home owners. if the path remains on council land it is unfair for owner to be maintaining land and structures they do not own.*

Option 2 (Targeted rate)

20 submitters chose this option as their preferred option. Some agree that it is necessary for the Council and property owners to share the costs of maintenance in some way. There is a general theme that this option will balance the financial burden on affected property owners and the quality assurance from the Council's planning and control of the work.

- ✓ *The option provides the best balance of maintenance quality and administrative smooth operation across the public and private realm. It also won't place overwhelming coordination and capacity concerns on the homeowners affected.*
- ✓ *Some kind of compulsion is needed to overcome the free-rider problem for these paths, ensure that they are maintained to a safe level, and avoid degrading the value of the properties served. The targeted rate should follow a standard formula so that costs approximate benefits to users. It is not clear why the targeted rate would have to be based on value of the property, as implied in the discussion material. The legal foundation for the target rate and the Council's decision-making around works on the paths could be resolved through a Local Bill. The exclusion of paths for one or two owners is justified because there is no free-rider problem when there is only one owner, and the problem when there are two owners is not too great. But three or more owners? It's a recipe for indecision and/or conflict that will do no-one any good.*
- ✓ *I have gone with option 2 just to have some likelihood of repairs happening, if it were left to property owners from experience I think very little would happen. There needs to be one person co-ordinating and in option 2 this would be managed by Council.*
- ✓ *The targeted rates option would give affected property owners visibility of, and confidence in, a programme of maintenance for the path. This option would break costs up into smaller amounts.*
- ✓ *Targeted rates policies seem to be a good way of providing essentially a form of 'maintenance insurance'. As noted above, a point of anxiety is the risk that we may be hit with a large and uncertain bill which we may not have the ability to pay for easily. However paying a targeted rates bill equal to the approximate annual cost of maintenance could be a public and non-for-profit form of maintenance insurance which I would be supportive of. While it would be my strong preference for part of the cost of the maintenance to be borne by the council - hence my preference for the targeted rates policy described above - even a targeted rates policy that implicitly gets homeowners to pay the full cost could be a good way to 'soften the blow' of homeowners paying the full cost of maintenance.*

Option 4 (Revoking the policy to allow the affected property owners to take over full maintenance responsibility)

Around 10 submitters chose this as their preferred option. Some of these submitters consider that the paths are private properties and property owners should be responsible for maintenance. There is a general theme that this option will provide equity for other property owners and rate payers.

- ✓ *Provides equity to other rate-payers consistent with user-pays policies enables council to fund other initiatives that affects wider rate-payers and public.*
- ✓ *These paths are effectively the private property of the owners' properties they lead to. The council should not be blindly subsidising private property owners' maintenance.*
- ✓ *People can then choose how they want to maintain their paths themselves. Also not fair compared with 1&2 property paths.*
- ✓ *Owners of properties who benefit from half cost paths should take over full maintenance. These owners need to be clearly identified, as some half cost paths only benefit one or two properties, but pass by several others which do not benefit from the path. Those who do not directly benefit from half cost paths (WCC, other ratepayers) should not be burdened by any maintenance costs.*
- ✓ *I begin my submission by acknowledging the challenging fiscal environment that the council is operating within, and it's need to make difficult choices. I note however, this is the same environment which many households find themselves in at the moment, with difficult choices having to be made on a daily basis as to what household and personal expenses are most important. It is for this reason that I have carefully considered the proposal document and provide my response below. I agree with the recommendation of changing the policy to shift liability for the maintenance of shared paths to the property owners who benefit from it (option 4). That seems like an equitable solution for ratepayers and an approach which has merit in other areas of council expenditure I'm sure.*

Q4- What other comments do you have regarding the half cost path policy?

236 submitters have answered this question. There are some general themes from their submissions.

- About 86 submitters challenge the rationale for the policy review. Many of them see the review as a Council attempt to cut costs or save money. Many comment that the policy proposal is not well-analysed or lack evidence supporting it. Some of them state that the proposed change is unempathetic and untimely.

> ✓ *Administration may be difficult but I suspect this symptomatic of a council that for many years has put presentation well ahead of service delivery. The council should put more effort into efficient administration rather that off-loading its responsibilities.*
>
> ✓ *In our case the creation of a private path was instigated by the Council when it moved the road originally serving our property to open up more space for housing. It seems especially unfair to expect us to shoulder the full costs given that the creation of the path was the Council's decision in the first place.*
>
> ✓ *While the operational challenges are acknowledged, a much more pragmatic approach would be to focus on making the current policy more explicit and workable (something the proposal doesn't address in any meaningful way).*
>
> ✓ *There is no financial information provided on maintenance costs - which makes understanding the issue unclear. The steps and paths that criss-cross Wellington's steep hills provide access to many residents but are also used and explored by day walkers and tourists. it is incorrect to state these paths only provide private benefits to their residents. It would detract from Wellington's unique charm if the Council no longer contribute to their upkeep.*
>
> ✓ *The Council is simply looking to shift the half share cost out of the General rate as a cost saving measure. It offers no benefit to the property owners. If the Council truly had the best interests of the property owners at heart, it would pick up the full cost and just add the work onto the list of items that Downers routinely take care. That would be something positive rather than punitive for a change.*

- About 63 submitters criticise that the Council has not adequately maintained half cost paths over the years and urge the Council to take full responsibility. Many of them state that the Council should continue the policy, as many property owners bought the properties relying on the information from the LIM report.

  - ✓ *In the February 2-24 Statement of Proposal for the Review of the Half Cost Path Policy, landlords or property trusts were reported to be generally less willing to engage and agree on maintenance work than owner occupiers. Surely the Council needs to address this situation itself. The challenges identified by the Council in administering the present policy are not going to be resolved simply by pursuing a different option. Given the WCC infrastructure group's extensive range of responsibilities, this cannot be the only thorny issue it has to deal with.*
  - ✓ *I think the council should maintain access to properties that they claim rates on where the properties sit directly on the road. I do not think the council should sever a path and then expect current landowners to foot the bill to prevent slips of road reserve onto a roadway because they have the misfortune to live above. With or without a path in such situation the council should be making good the road reserve for the users of the roadway, as preserving the right of support to the neighbouring properties.*
  - ✓ *There is a difference between equality and equity. Yes a rate increase for a service you may never benefit from might be unpopular with some people (businesses may grumble about providing wheelchair access, not everyone would ever go to a sports game for example), but we are a city as a whole. Hills are an integral part of Wellington, presumably why this historical policy still remains. It doesn't "work well" for Council then amending it so the Half Cost Path policy is easier (for all) to implement is the best solution.*
  - ✓ *The underspending of maintenance historically should not be clawed back in this manner, council cannot force homeowners to maintain property that do not belong to them, this will lead to similar situation to the earthquake strengthening issue when individual home owners with different abilities to afford repair and no experience in engineering are forced to project manage and fund complex repairs. leading to general disrepair that is going to spread from the CBD to the suburbs.*
  - ✓ *We believe that the Council is the best-placed to be in the 'driving seat' as regards these 'half-cost' paths. The land involved belongs to WCC and it is the party that knows about, and is responsible for, all the health and safety issues concerning the path. Furthermore, it has the expertise and clout to know what maintenance work should be done and to get such work done efficiently and at reasonable cost. Achieving agreement and action on maintenance from multiple property owners will be problematic and could cause health and safety issues, resulting in complex legal battles.*

- About 30 submitters state that there needs to be more information for decision-making regarding the half cost paths and related retaining walls, including clarifying the status of the path.

> ✓ *Information that your house is served by a half cost path should be made clear on your title or rates information. I was unaware my house was served by a half cost path before receiving this letter in the mail on the policy change.*
>
> ✓ *Looking at the map, there are a lot of these paths that are actually footpaths - they act as a through path, eg does not just lead to a house. If the policy is revoked it should take into consideration whether to re-classify some of the paths to general footpaths and therefore come under the council to upkeep. The other issue is are the council happy for homeowners to do their own work and maybe not do it as good as the council, it is not just the homeowner that uses the path, so health and safety has to be a factor on whether it is safe to leave this up to a DIYer?*
>
> ✓ *Just to reiterate that a one size fits all policy is not practical in some cases and may create more inequality than the status quo. Passing a policy just based on the number of votes for each option is likewise unreasonable, unless careful attention to the wording of the policy is taken. As in my example damage to the path may be caused by issues with council infrastructure, leaking pipes etc. In my view if it is council/public land, council should take responsibility for it.*
>
> ✓ *Does the council plan to provide the proper easements for these privately maintained private access footpaths located on Council land? What if I decide to build a shed on the area of private access footpath adjacent to my property? I might want a covered path with bicycle storage or an electric car charging station. Liability; who carries the liability for personal injury for someone using a privately maintained private access path on council land? Will we see a plethora of signs erected at the transition from public footpath to private access footpaths, stating something along the lines of "Use of this private access path is at your own risk". What alternative with property owners have? None.*
>
> ✓ *This proposed new policy makes me question the status of our own "half cost path", because its design makes it at least partly function as a public footpath (going by the definitions in the consultation document). I wonder whether, going forward, will there be an easy way for ratepayers to challenge the designation of the path outside their house?*

- About 14 submitters worry about the relevant access path (whether it is a half cost path or not) potentially degrading further. They identify a range of issues and provide alternatives for consideration.

> ✓ *I think that when the developers decide to intensify the properties that are adjacent to a half cost path, we have a new set of problems for the neighbours. It seems that included in the consenting process, it would be sensible for the WCC to make mandatory notification of increased numbers of residents on the pathway.*
>
> ✓ *I appreciate the Council is trying to save money and I really wish you would just be honest about this instead of making out you are doing owners a favour by 'allowing' them to take on responsibility for shared paths. If you are going to pursue this policy you need to set up some kind of structure like a city-wide body corporate for shared path property owners that enable owners to repair their shared paths without getting bogged down in neighbour disputes and inaction. On a separate note, I've often wondered why the council doesn't sell road reserves to owners. I'd happily buy my road reserve for a reasonable sum. The council must own vast amounts of road reserve land that it is unlikely to ever use and surely this would be a handy revenue raiser.*
>
> ✓ *I am concerned at the recent significant damage and degradation to our shared path caused multiple repairs (4x) of the same water leak in the vicinity. The many excavations and subsequent patchwork and ill-considered repairs have caused deeper damage than just the surface of the path, with wider subsidence and slumping visible. I am concerned about taking on responsibility for these repairs after the damage that has been done.*
>
> ✓ *However, if I could make a comment on the policy review, I would like to emphasise the safety issues around the council relinquishing all responsibility for maintaining pathways. We found it hard enough to have a neighbour agree to replacing our shared side fence, so the idea of getting several neighbours to agree to repairing a shared pathway without some input from the council sounds very fraught. If the maintenance of paths is left to such agreement on payment, I think there will be many deathtraps in the Wellington suburbs. I know of several cases where people have fallen and broken bones or worse on cracked or broken paths.*
>
> ✓ *I think it is high risk for the council to be responsible for health and safety, then say someone else is responsible to fix it long term. It's like our steps that should have had a non-slip surface added to it when the council replaced them when doing Grafton Rd retaining wall replacements (roading). Would waterblast which was a waste of money, should have just painted the non-slip paint on it. Council is just trying to get out of their obligations and finding ways to cut costs instead of doing what is right.*

Q5 - Do you agree that the property owners and the Council should share the maintenance and renewal costs for a retaining wall or other supporting structure that is built to support a half cost path? If so, how could the costs be apportioned fairly? If not, why not?

252 submitters answered this question. Among them, 175 submitters answered 'no' and 77 submitters answered 'yes'.

While the question concerns retaining walls or other supporting structures that are built to support a half cost path, many submitters discuss:

- retaining walls or other supporting structures along with the access path, or
- banks without retaining walls or supporting structures, or
- retaining walls in general rather than those built to support a half cost path.

For the reasons given for a 'no' answer, there are some general themes.

- About 96 submitters state that the Council should pay the full cost as the wall is on Council land or is supporting the road.

  - ✓ *Private owners should not be responsible for council land. The council own the land, the owner doesn't have it on their title. I have a grass berm outside my property, owned by the council and yet I'm expected to maintain it!*
  - ✓ *I am strongly of the view that the Council is solely responsible for any retaining walls or structures which it has built pm road reserve land. Road reserve is therefore the benefit and convenience of the Council. It would be extremely unfair to expect individual property owners to assume responsibility for structures they did not build and do not own; moreover, on land they do not own.*
  - ✓ *I believe that council should be responsible for maintaining any structures on its own land, and particularly when those structures serve a road, street or other public space. Homeowners could not afford to pay for significant repairs to retaining walls, and would likely be unable to obtain insurance. This could also significantly affect the ability of people to sell their homes in the future.*
  - ✓ *The retaining wall holds up a section of hillside just before a hairpin bend in front of a kindergarten and carries both gas and water pipes. It is already distressed and overgrown with Cape Ivy. Significant amounts of water flows through the site during heavy rainfall. None of this is our land: it is council land.*
  - ✓ *In regard to retaining walls how will the council determine whether the bank retention work was originally required to protect the road and pedestrian pathway rather than the 'half cost pathway'? In this situation any necessary repair of the bank and retaining walls would be orientated towards the safety and protection of the road and pedestrian pathway and clearly the responsibility of the Council. Quite clearly any assessment would need to be made by an independent third party, not the council. In my case the shared path, bank and retaining walls are 100% on council land and therefore not covered by household insurance and therefore no EQC cover is available to the property owner. This proposed change would represent a new, significant financial obligation on me as property owner that has never been recorded on the LIM. Again unacceptable. It would be interesting to understand on what legal basis the Council intends to allocate maintenance costs of banks and retaining walls to property owners for land which is 100% council owned and over which property owners have no legal interest.*

- About 15 submitters state that the costs associated with retaining walls are beyond individual households and the Council should take full responsibility.

  - ✓ *Unaffordable for homeowners who already pay astronomical rates for Council services.*
  - ✓ *I would be happy to go 50/50 with neighbours and Council, but this has never happened.*
  - ✓ *The cost of such systems could be beyond the financial capacity of a household… Slope failure from seismic or weather events could result in local slope failure that could result in one or two properties not having access while still available to others on the same path. Remedial work may not be seen as a concern for those unaffected putting additional financial burden and a source of conflict on those affected. Some retaining and anchoring systems will have impacts beyond the affected households along the access path. For instance where slip failure could prevent access for other properties, who would carry the liability of this? Some slopes are a direct result of a road cutting or other infrastructure in councils care, it seems reasonable that this road cutting should take into account local geological conditions and ensure that the road cutting does not contribute to local ground instability.*
  - ✓ *The council should incorporate the costs in the rates and spread the costs among the population. And look to how it can make costs elsewhere more efficient.*
  - ✓ *Many property owners can barely afford rates, insurance etc without the burden of a cost like this.*

- About 11 submitters state that the Council should pay the full cost as the retaining walls have been consented by the Council in the first place or that they should be treated the same as other infrastructure.

  - ✓ *Council should be responsible for these costs if a consented pathway was granted by council.*
  - ✓ *Costs should remain with the Council. The Council, at some point, gave permission for properties to be built (And have been collecting rates ever since). The retaining walls around Wellington are on Council land and therefore Council responsibility, like roading etc. We already pay for utilities, infrastructure and public transport through the rates. Council needs to prioritise spending on these basics.*
  - ✓ *These structures are foundational to the City. Their necessity/construction and maintenance must lie with Council who Resource Consent and Permit them, and presumably take into account maintenance and standards of maintenance. Compliance costs/maintenance costs for this type of foundational structure cannot be sustained by property owners.*
  - ✓ *Ideally the council would pay 100% for the full infrastructure as it enables more people to build more houses and more people to populate Wellington.*
  - ✓ *It's a footpath just like any other footpath in Wellington. There are accessibility challenges in Wellington due to terrain and these need just as much maintenance as other footpaths.*

- About 4 submitters state that maintenance of retaining walls should be borne by the property owners benefitting from the infrastructure.

> ✓ *Owners of properties which benefit from a half cost path should pay for any required maintenance and renewal. Such costs should not fall on WCC or other ratepayers which do not benefit from the half cost path.*
>
> ✓ *User pays for true private paths leading to a few private properties (as seems to be the current policy intent)*
>
> ✓ *Property owners should pay for the maintenance and renewal of their property in full. NZ's property market is heavily subsidised by the absence of a capital gains tax. Therefore any improvement in the value of a property should financed fully by the owner, as the profits of the improvement will be completely untaxed once sold.*

As to the reasons given for a 'yes' answer, 67 submitters have provided answers to the follow-up question about how the costs could be apportioned fairly.

- About 31 submitters state that a 50:50 split of the costs between the Council and the relevant property owners similar to the current arrangement with half cost paths would be acceptable.

> ✓ *50:50 would be the obvious starting point however, where slips pose safety risks to roads or other property then case by case may warrant more urgent intervention and deserve more council funding.*
>
> ✓ *50/50 seems fair - in our case the wall and path went in together and the landowners funded their half then. Provided there was consultation, and clear expectation of why maintenance needs to happen I am sure landowners would see benefit. It may be that a wall does not affect all the owners along a shared path, so the shared costs may fall on a subset of property owners, but the option to access shared costs is the only way people will step up and do any maintenance. Similarly, if Council step away from any cost responsibility for walls they risk allowing infrastructure on their own reserve land slipping into disrepair and causing larger issues.*
>
> ✓ *Split 50:50. The full cost of replacement and repair for a property owner is likely to be prohibitive. The beneficiary of the wall is the property owner rather than the rate payer so fair that they pay a part. If the full cost sits with the property owner, a behaviour some might engage in is allowing the wall to fail and claiming on insurance. This presents a safety risk.*
>
> ✓ *This needs to be on an equal share basis as applies in private situations, unless owners agree otherwise. In these situations if council need to claim against owners then I advocate pragmatism, so I recommend the equal (rather than setting up council to become caught in the middle of people with different agenda who cannot agree on what the proportional basis should be).*
>
> ✓ *My preference would be for a targeted rates approach for 50% of the cost, operating under a proper legal framework, with WCC having clear and legally enforceable obligations to undertake maintenance and renewal on a timely basis. Paying the targeted rates would be the unambiguous legal obligation of the property owners.*

- About 14 submitters state that a targeted rate or other cost sharing arrangements should be considered.

> ✓ *Most of the cost should be borne through a fee (or "targeted rate") payable by the relevant owners and calculated to recover the cost of these paths across the city over a period of time. Ideally, owners furthest from the public path would pay a higher fee (eg the fee might have a base component plus an amount per metre of path from the public path to the owner's property).*
>
> ✓ *Yes - if cost is shared and quoted in advance by the Council. If the work is localised to a particular gate area - 100%. If the work affects the whole path - 25%. i.e. pro-rated depending upon the proximity to the access gates.*
>
> ✓ *A fair allowance would be: - Council 80% - Owners 20%.*
>
> ✓ *Not everyone will be in the same situation. The Council should think of itself like an insurance company. Hedge the risk. Step in and address the big problems for people where the cost is untenable for an individual. That's fair.*
>
> ✓ *On the basis the retaining wall is needed for the path, and not another purpose (such as protecting a road). As the path is on WCC land, it's appropriate the path owners contribute to pedestrian access to their home. However, if the retaining wall is required due to WCC infrastructure (i.e. roading) then it is unreasonable to expect private landowners to meet these costs. Particularly as noted above where damage to the bank supporting the path occurs from road users or WCC roadside maintenance teams. There are simple algorithms which would address this concern.*

Panel survey results

Among the 845 panel survey responses, 592 respondents (70%) state that they were not aware of the Half Cost Path Policy before the review, while 253 respondents (30%) state that they were aware of the policy.

Regarding the preferred option, the panel survey provides quite different responses from the public submissions in that the most preferred option was Option 4. The number of submissions which chose each option as the preferred option is listed in the following table, and their respective themed reasons for choosing them are provided afterwards.

Preferred option	Number of submissions	Percentage
Option 4: Revoking policy – owner takes full responsibility	295	35%
Option 1: No change	171	20%
Option 5: Revoking policy – the Council takes full responsibility	143	17%
Option 2: Targeted rates	136	16%
Option 3: Invoice for half costs	100	12%

For those choosing Option 4, there is a general theme that those who benefit from the path should pay for the maintenance. This is a fair and equitable option similar to the 'user pays' principle. Other ratepayers should only fund public roads rather than be required to subsidise for the beneficiaries of the paths. These paths should be treated the same as private driveways on Council's road reserve.

For those choosing Option 1, there is a general theme that the current policy works well and a change would be unfair as many property owners have bought their properties on the expectation of the arrangement to share costs of maintenance for these paths. The Council should not walk away from this commitment.

For those choosing Option 5, there is a general theme that the paths are on the Council's land and these paths should be treated the same as other footpaths or cul-de-sac paths.

For those choosing Option 2, there is a general theme that this option would ensure all affected property owners pay their fair share, without going through the difficult negotiation process, and facing a large and unexpected invoice. Some cite that this option is fair and effective to operate, based on the Council paying half the cost and taking on the management.

For those choosing Option 3, there is a general theme that this option continues the status quo in that Council pays half costs related to the maintenance. However, this option is more effective to ensure the maintenance work really gets completed to good quality.

Affected homeowners within the survey sample have similar preferred options to those submitters in the public consultation. Their most preferred option is Option 5 and least preferred option is Option 4. The top two preferred options (Option 5 and Option 1 combined) are both around 80 percent.

As to the question about cost sharing for relevant retaining walls or other supporting structures built to support a half cost path, 448 responders (53%) state 'no' while 397 responders (47%) state 'yes'. There are similar themes in the respective responses to those in the public submissions.

Officers' responses to the submissions and survey responses

Officers have considered all the submissions and survey responses, and provide respective responses.

General response

Officers consider that the current policy is not working well for either the relevant property owners or the Council.

- As to the themed challenges identified by submitters, including difficulty in dealing with the Council, costs, difficulty in coordinating among the neighbours, difficulty in organising maintenance or remedial work, and inability to get insurance, officers consider that even though the path is on Council land, the Council has no obligation to maintain access for private property owners. These paths are not different from those serving only one or two properties. The inability to get insurance is not unusual as other constructions such as a garage on Council land through an encroachment licence are also not able to get insurance. Those who benefit from the paths should take up the maintenance responsibility.
- The Council will continue to update the LIM to support a better understanding of the relevant rights and obligations for those affected property owners on shared paths.
- The Council will put in place effective process to enable requests of maintenance or remedial work on Council land.

Option specific response

Option 1 – No change

- It is the second most preferred option from the public submissions. The key reasons given include that this option is the fairest given the Council owns the land and is obliged to provide access to the properties, and the Council needs to maintain its commitment under the agreement.
- It is also the second most preferred option from the panel survey. The key reasons given include that the current policy works well, and a change would be unfair.
- Officers consider that this option should not continue with the identified equity concerns resulting from the private benefits versus public good consideration. The Council is reviewing the policy due to the challenges experienced from implementing the policy.

Option 2 - Targeted rates

- Submitters who choose Option 2 give reasons that this option will balance the financial burden on affected property owners, and provide quality assurance through the Council's planning and control of the work.
- From the panel survey, there is a general theme that this option would ensure all affected property owners pay their fair share, without going through the difficult negotiation process, and facing a large and unexpected invoice.
- The Council cannot implement a targeted rate at this time. Under the Local Government (Rating) Act 2002, the activity for which a targeted rate would be set

needs to be identified in Council's funding impact statement, which is a long-term plan process. More work would need to take place, with further consultation and decisions by Council.

Option 3 - Invoice for half cost

- Submitters who choose Option 3 give reasons around it is fair to share costs between the property owners and the Council, and easier and faster for the Council to organise and manage maintenance work.
- There is a similar theme around the reasons from the panel survey.
- There is no enforceable mechanism for the Council to invoice the property owners for the maintenance cost. Officers do not recommend this option due to practical challenges to set up and operate the invoice scheme.

Option 4 - Revoking the policy to allow the affected property owners to take over full maintenance responsibility.

- Only a small number of submitters (10) choose it as preferred option. There is a clear theme that this option will provide equity for rate payers. The general consideration is that these paths are private properties and property owners should be responsible for maintenance.
- It is the most preferred option from the panel survey. The key reasons given include that those who benefit from the path should pay for the maintenance. This is a fair and equitable option similar to 'user pays' principle.
- Officers agree that this option is an equitable option for other affected property owners and general ratepayers. Officers acknowledge the challenges to those affected property owners identified by the submitters, such as costs of maintenance or remedial and coordination among the property owners. Therefore, officers recommend a transition period for implementation if this option is to be adopted.

Option 5 – Revoking the policy and the Council taking up the full maintenance responsibility

- It is the most preferred option from the public submission. The key reasons given include that the Council owns the land, it is most efficient and effective for the Council to organise and complete the work, and the paths should be treated the same as other public footpaths.
- It is the third most preferred option from the panel survey. The key reasons given include that the paths are on the Council's land and these paths should be treated the same with other footpaths or cul-de-sac paths.
- Officers do not consider that the Council is obliged to maintain the path simply because it owns the land. It is also inequitable to other property owners served by similar access ways (for the situation only one or two property owners being served by the path) or other general ratepayers.

Retaining walls

The majority of the submitters respond 'no' to whether to share the costs related to retaining walls that are built to support the half cost paths. The key reasons given include

that the Council owns the land, the cost is beyond any individual household, and the Council has granted consent for building the retaining walls.

There has unfortunately been some misunderstanding about the scope of retaining walls and other supporting structures referred in the question. Given that, Officers propose to exclude retaining walls from the review of the half cost path policy. The Council currently deals with maintenance and remedial work related to retaining walls on a case-by-case basis under the Slips Policy 1995. This means, in case of a slip:

- Council will clear, stabilise, and reinstate slips to fulfil its legal obligations to protect public property and support private property at the property boundary.
- Council will not assist with the reinstatement of private access, except where the slip is the result of Council works subsequent to the construction of that access.

Officers propose to review the Slips Policy 1995 and develop a guidance document on how to deal with maintenance and remedial work related to retaining walls in 2025.

Recommendations

After considering public submissions and panel survey results, officers recommend that the Committee adopts Option 4 with a transition period of five years. The transition period will start from 1 January 2025 to allow relevant preparation work to be completed, including updating our data base and relevant Land Information Memorandum (LIM), notifying all the affected property owners, and clarifying the operational process during the transition period.

This means that the Council will no longer subsidise the building and maintaining of accessways across its land, bringing accessways serving three or more properties in line with other paths that serve one or two properties, and driveways.

To ensure a smooth implementation of this option, the Council will:

a. Specify in the LIM of affected properties, the property owners' responsibilities related to the maintenance of the access path, including the surface, handrail, and drainage.
b. Continue to offer a 50 percent contribution to the maintenance cost if the relevant property owners agree with the maintenance work and pay their 50 percent share of the cost.
c. Complete the agreed maintenance work within the baseline budget.
d. Set up a clear process for carrying out maintenance and remedial work, in that:
    i. Property owners request for maintenance work.
    ii. Council will assess the scope of the maintenance work and estimation of cost, and inform all the relevant property owners in writing.
    iii. All property owners on the same path need to agree in writing to the scope of work and share the 50 percent cost. The Council will not begin any work until an agreement has been signed and a deposit of 10 percent of property owners' share has been transferred to the Council. Note the balance will be paid on completion of the work, with the option of property owners and the Council agreeing a payment plan.
    iv. The Council undertakes maintenance work on a risk basis. That means a higher risk work may take priority over a lower risk work, for example, a

path that needs rebuilding after a slip may be prioritised over some maintenance work such as painting of handrails.

v. The Council will not reimburse property owners for any work carried on the path without discussing with the Council first.

Relevant property owners will take up the full maintenance responsibility associated with the access path after the transition period, which will be specified in the LIM. If there are quality concerns about an accessway in the future, the Council will notify the residents in writing and allow a reasonable amount of time for residents to fix the pathway before Council considers any further action.