

# Hearing Agenda

## Road Reserve Management Policy

Friday 20 October 2023

11am

Council Chamber  
215 High Street  
Rangiora

**Council:**

Councillor Al Blackie

Councillor Tim Fulton

Councillor Philip Redmond

## WAIMAKARIRI DISTRICT COUNCIL

**THE HEARING AND DELIBERATIONS OF THE ROAD RESERVE MANAGEMENT POLICY SUBMISSIONS WILL BE HELD IN THE COUNCIL CHAMBER, RANGIORA SERVICE CENTRE, 215 HIGH STREET, RANGIORA ON FRIDAY 20 OCTOBER 2023 COMMENCING AT 11AM**

### BUSINESS

Page No

#### **1. APPOINT A HEARING PANEL CHAIRPERSON**

#### **2. APOLOGIES**

#### **3. CONFLICTS OF INTEREST**

*Conflicts of interest (if any) to be reported for minuting.*

#### **4. HEARING OF SUBMISSIONS**

11:05am Dave Ashby

11:15am Karl Dean, North Canterbury Federated Farmers

11:25am Geoff Holgate, Herenga ā Nuku Outdoor Access Commission

##### **4.1. Copy of all Submissions**

All submissions received are included as attachments (ii) to (v) to the staff report below.

#### **5. STAFF REPORT**

**Road Reserve Management Policy Submissions – Hearing Panel Report and Recommendations – Joanne McBride (Roding and Transport Manager) and Shane Binder (Senior Transportation Engineer)**

##### *RECOMMENDATION*

**THAT** the Road Reserve Management Policy Hearing Panel:

- (a) **Receives** Report No. 231010160380.
- (b) **Receives and considers** all submissions on the Road Reserve Management Policy.
- (c) **Defers** consideration of changes to grazing restrictions as listed in Appendix A (Grazing-restricted roads) and retains existing grazing restrictions as listed in Attachment viii.
- (d) **Notes** a targeted consultation of changes to grazing restrictions will be carried out and reported back to Council at a future date.
- (e) **Notes**, subject to any recommended changes by the panel, staff will prepare a report to Council on behalf of the Hearings Panel recommending the adoption of the reviewed Road Reserve Management Policy.

**WAIMAKARIRI DISTRICT COUNCIL**

**REPORT FOR DECISION**

**FILE NO and TRIM NO:** GOV-07-02, RDG-01 / 231010160380

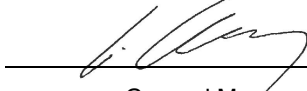
**REPORT TO:** ROAD RESERVE MANAGEMENT POLICY HEARING PANEL

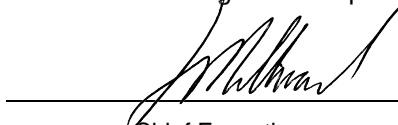
**DATE OF MEETING:** 20 October 2023

**AUTHOR(S):** Shane Binder, Senior Transportation Engineer  
Joanne McBride, Roading & Transport Manager

**SUBJECT:** Road Reserve Management Policy Submissions – Hearing Panel Report and Recommendations

**ENDORSED BY:**  
(for Reports to Council, Committees or Boards)

  
 General Manager

  
 Chief Executive

**1. SUMMARY**

- 1.1. This report presents for consideration, written submissions received from the consultation for the review of Council's draft Road Reserve Management Policy, which opened on Monday 7 August and closed Thursday 7 September 2023.
- 1.2. In total, four submissions were received with three submitters wishing to present their views to the Hearing Panel.
- 1.3. Included in this report are the submissions received along with staff analysis and recommendations to the Panel.

Attachments:

- i. Draft Road Reserve Management Policy (TRIM: 221117200292)
- ii. Public Consultation Submissions (Bang the Table) Survey (TRIM: 231011162243)
- iii. Public Consultation Submission – David Ashby (TRIM: 230911141571)
- iv. Public Consultation Submission – North Canterbury Federated Farmers (TRIM: 230911141572)
- v. Public Consultation Submission – Herenga ā Nuku (TRIM: 231004156856)
- vi. Ombudsman 1992 Case note W28151 (TRIM: 231004156859)
- vii. Herenga ā Nuku 2022 *Guidelines for the Management of Unformed Legal Roads* (TRIM: 231004156858)
- viii. WDC Road Reserves Fencing & Grazing Policy, "Grazing" excerpt (TRIM: 231017165419)

**2. RECOMMENDATION**

**THAT** the Road Reserve Management Policy Hearing Panel:

- (a) **Receives** Report No. 231010160380.
- (b) **Receives and considers** all submissions on the Road Reserve Management Policy.
- (c) **Defers** consideration of changes to grazing restrictions as listed in Appendix A (Grazing-restricted roads) and retains existing grazing restrictions as listed in Attachment viii.
- (d) **Notes** a targeted consultation of changes to grazing restrictions will be carried out and reported back to Council at a future date.
- (e) **Notes**, subject to any recommended changes by the panel, staff will prepare a report to Council on behalf of the Hearings Panel recommending the adoption of the reviewed Road Reserve Management Policy.

**3. BACKGROUND**

- 3.1. The driver for this policy review is to ensure that the Council's published policies remain current and relevant. As a result of evolving service delivery processes and regulatory changes, it is timely to ensure policies reflect the Council's current intent and practices.

- 3.2. During the review process, several existing Roding policies have been reviewed, updated, and amalgamated into a single policy, to ensure an effective and efficient policy structure. Maintaining these documents separately over time is more resource intensive, as well as having the potential to generate duplication or inconsistency.
- 3.3. The draft policy is a combination of the following existing policies:
  - Rural Seal Extension Policy
  - Private Funding of Seal Extension Policy
  - Formation of Unformed Roads Policy
  - Road Reserves Fencing & Grazing Policy
  - Stock Underpasses Policy
  - Vehicle Crossings, Entranceway and Driveway Surfacing Materials Policy
- 3.4. The absence of formal guidance with regards to certain responsibilities within the road reserve has led to confusion and conflicting expectations among adjacent landowners and road network users. Thus, new sections have been added based on current practice, to provide clarity on expectations for use and maintenance of all elements in the road reserve.
- 3.5. The draft policy also includes new sections for other roading functions including:
  - Road surfacing – based on the previously agreed levels of service for surfacing roads as approved by the Utilities & Roding Committee in 2007 (TRIM No. 071108035864)
  - Roadside berms – clarifying maintenance responsibilities for urban and rural berms as well as expectations for existing and potential trees and hedges.
  - Unformed legal roads – specifying responsibility for maintenance and criteria for occupation, formation, and stopping
  - Road corridor usage including storage – defining conditions for temporary berm use
  - Utilities – identifying expectations for installing utilities in the roadside
  - Work zones – setting requirements for safe traffic management planning
- 3.6. Two existing related policies, the “Street Naming Policy” and the “Street and Reserve Trees Policy,” were not included in this amalgamation. The Street Naming Policy has now been incorporated into the new “Naming Policy” (TRIM No. 230321039443) while the Street and Reserve Trees Policy remains under with the Greenspace Unit.
- 3.7. Council at its meeting on 6 June 2023 authorized officers to undertake a public consultation process on the outcomes and approved the nomination of Councillors Blackie, Fulton, and Redmond to a Hearings Panel Committee.
- 3.8. The consultation ran from 7 August to 7 September. This report has been prepared to support the panel in its deliberations on the findings from the public consultation exercise.

#### **4. ISSUES AND OPTIONS**

- 4.1. Although the consultation was promoted extensively through social media outlets and print media, only four submissions were received. The engagement statistics are broken down as follows:
  - 4.1.1. 256 visitors to the consultation page.
  - 4.1.2. 198 clicked on consultation.
  - 4.1.3. 74 of those sought further information, including reading the policy.
  - 4.1.4. 8 of those provided feedback, including five quick poll responses, one survey, and three emailed submissions.
- 4.2. From the engagement, there was mixed feedback on the draft policy. 60% (3) of the quick poll responses supported the changes overall, along with the online survey response, and a submission from Herenga ā Nuku. 40% (2) of the quick poll responses did not support the changes. Submissions from D Ashby and North Canterbury Federated Farmers made comments on specific provisions but did not comment on overall support or opposition.
- 4.3. Appendix A should be modified to note that River Road refers to the Rangiora segment and Island Road refers to the Kaiapoi segment.
- 4.4. Suggestions were made through submissions to either modify or remove some elements of the proposed policy. These are discussed in greater detail below including a staff commentary on suggested changes.

#### 4.5. Analysis of Submission Points Received

General comments	
<p>Herenga ā Nuku:</p> <ul style="list-style-type: none"> <li>• That the term 'road corridor' be substituted for the term 'road reserve', throughout the document. The title of the Policy would therefore be "Road Corridor Management Policy".</li> <li>• That the introduction be expanded as follows; "This policy sets out the Waimakariri District Council's (the Council) approach to managing activities within the road <del>corridor reserve</del>. It addresses uses and management requirements <del>on berms and unformed legal roads in the road reserve</del> that can affect private activities or impose costs on residents and provides clear guidance to staff and the community. <del>Public access is a right on all legal roads.</del>"</li> <li>• That the second bullet point in the Scope be expanded as follows: Specifications for the use of unformed legal roads and forming unformed legal roads <del>and the process for stopping unformed legal roads</del>".</li> <li>• That a new point 4.1 be inserted to read; "To ensure that the public right of passage along unformed legal road corridors is preserved while protecting the environment, the road and adjoining land, and the safety of road users."</li> </ul>	<p>Staff support a change from "road reserve" to "road corridor."</p> <p>We do not recommend inclusion of a new sentence focused on public access to the introduction. This section does not highlight any of the other legislative or legal foundations for the policy, which instead are expanded upon in the Policy objectives.</p> <p>Staff recommend accepting changes to the Scope bullet on unformed legal roads.</p> <p>Staff also recommend adding a new objective "The policy ensures that the public right of passage along unformed legal road corridors is provided."</p>

## 5.0 Sealing roads

M. Beckett:

- You have failed to recognise safety along dust mitigation and simply made it about money or specifically when the government contributes.

North Canterbury Federated Farmers:

- Unsealed roads are an issue for many of our members due to dust, mud, run-off and potholes. Council needs to be doing more for rural road users, including sealing and rebuilding the base of over graded roads. Three situations are details in the policy where the Council will seal unsealed rural roads: (1) where co-funding by Waka Kotahi is provided, (2) where a 30% financial contribution is provided from an affected subdivision, and (3) when privately funded. These criteria are limiting and do not provide the Council with discretion to elevate priority roads which may result from complaints being received. It is suggested that a fourth criterion is added: (4) when high traffic volume, dust exposure and/or safety reasons warrant sealing of the road, in the opinion of the Council.
- The contribution rural ratepayers make to the Council's rating income is significant. Therefore, the cost of sealing rural roads should be at the Council's expense.
- Under the Policy, private funding for seal extension is considered when the adjoining property owner(s) contributes 50% of the cost. However, it would be more appropriate to request 30-40% of the cost of sealing. It is not only the private property owners who benefit from sealing rural public roads. The safety benefits of sealing a road are experienced by all members of the community. Roads are a public good therefore the cost of sealing should fall primarily to the Council.

We acknowledge the concerns around safety, surfacing, and dust from unsealed rural roads. However, the current rates take by Council does not allow for an ongoing programme of sealing the unsealed rural road network.

Sealing for safety reasons is carried out at Council discretion, independent of this policy.

The majority of low-volume unsealed rural roads carry traffic primarily generated by local traffic rather than through traffic. Higher-traffic volume (around 300-400 vpd) roads are already accounted for in the existing policy and are considered for sealing. Staff do not recommend accepting these changes.

## 6.0 Unformed legal roads (general)

### North Canterbury Federated Farmers:

- The Walking Access Commission states that councils have no express statutory powers to grant a lease or licence over part of a road for private benefit. Yet Council's Policy states: Approved requests for occupation will be formalised through a Licence to Occupy. We suggest the Council remove this requirement.
- We are aware that at times our members utilise some or parts of paper roads, i.e. for stock movement. The use of these roads is vital for their business operation, for example when accessing a dairy shed. The process of having to apply for a licence to occupy a paper road is overly onerous. The policy does not detail when a licence to occupy would be granted or withheld and we imagine this will cause a lot of stress for farmers in this situation. There may also be implications for those selling farms whose businesses rely on the use of paper roads. The Council should remove this requirement from the policy.

### Herenga ā Nuku:

- That section 6.1.1 be amended as follows;  
"The Council has **statutory powers to manage and control roads** ~~a responsibility~~ under the Local Government Act 1974 (Part 21) and Land Transport Act 1998 (Part 3), **and has a duty** to ensure that the public right of passage along unformed legal road corridors is preserved while protecting the environment, the road and adjoining land, and the safety of road users."
- That section 6.1.2 includes the following link to a summary of the Outdoor Access Code <https://www.herengaanuku.govt.nz/home/outdoor-access>
- That section 6.2.2 be reworded and expanded as follows;  
"The Council is obligated to inspect and maintain non-roading assets that it has purposefully installed in unformed legal roads, such as drainage or **plantation forestry blocks**. **These assets must not obstruct public access.**"

Staff note the guidelines by NCCF further state "[T]here is an inferred and general authority for a council to permit temporary occupation or encroachment of part of a road — providing such occupation or encroachment does not interfere with the public's right to pass and repass along the road or create some other nuisance." There is a general legal precedent supporting Road Controlling Authorities' ability to temporarily permit use of unformed legal roads so long as public access is not limited.

On the other hand, stock movement is covered by the Stock Movement Bylaw and there is no intention to require a Licence to Occupy to use an unformed legal road given the short timeframe for such uses.

Staff do not recommend accepting changes proposed by NCCF.

Staff recommend inclusion of Council's "statutory powers," but do not support accepting wording imposing a "duty" to ensure public right of passage. We have received legal advice that this wording could create a higher bar for Council to adhere to than is required by the relevant legislation.

Staff recommend accepting other changes proposed by Herenga ā Nuku, including changing to "plantation forestry," and adding a new bullet that existing or new Council non-roading assets within unformed legal roads should not obstruct public access.

### 6.3 Private occupation and encroachments in unformed legal roads

<p>D Ashby:</p> <ul style="list-style-type: none"> <li>We feel that a clause giving long standing farmers some form of existing use right would be appropriate.(or guarantee us a License to Occupy) We milk 600 cows, contribute to the local economy employ 3 fulltime staff and 2 casuals. and use local contractors. This policy puts our business at risk.</li> <li>Two main issues concern us, including: <ul style="list-style-type: none"> <li>Public access is a license to give the public the back door keys to your business. It promotes crime and is possibly a health and safety issues. Down Hicklands Road we have issues with Boy racers already.</li> <li>A disgruntled neighbour could make it very difficult for us under this draft policy.</li> </ul> </li> </ul> <p>Herenga ā Nuku:</p> <ul style="list-style-type: none"> <li>That a new 6.3.1 be inserted as follows; "Any unauthorised encroachment on a road is an offence under Section 357 Local Government Act 1974"</li> <li>That section 6.3.2 be amended as follows; "Approved requests for occupation will be formalised through a Licence to Occupy and must comply with this policy and the conditions of that Licence to Occupy, <b>including that public access must not be obstructed</b>. See the Council Rural Land Lease and Licence Policy for additional terms."</li> <li>That the Rural Land Lease &amp; Licence Policy referenced in section 6.3.2 be noted as "draft"</li> <li>That any Licence to Occupy unformed legal road be for a fixed term and be able to be terminated by Council.</li> <li>That Council does not issue any lease over the surface of an unformed legal road, and that any leases that may already be in place are converted to Licences to Occupy.</li> </ul>	<p>Staff acknowledge the obligation that public users of unformed legal roads need to responsibly travel adjacent to private property. While Council has an obligation to allow for public access to these roads, the intent is to do so in a manner that discourages illegal and malicious behaviour.</p> <p>Adjacent landowners may apply for a License to Occupy unformed legal roads under the proposed policy, but any guaranteed use or long-term use would likely not be permitted under unformed legal road requirements.</p> <p>Staff note that proposed wording does not specifically discuss consultation with neighbours. However, it would be good to seek clarity from submitter how they envisage 'disgruntled neighbours' being involved in the process. Staff do not recommend accepting any further changes.</p> <p>Staff recommend accepting as a new clause 6.3.6 -"Failure to obtain the necessary authority from Council to occupy or encroach onto unformed legal road is an offence under the Local Government Act 1974."</p> <p>Staff recommend accepting other changes proposed by Herenga ā Nuku. Staff further recommend that the WDC Rural Land Lease &amp; Licence Policy be carried forward for review and adoption by Council.</p>
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#### 6.4-6.6 Private occupation and encroachments in unformed legal roads

Herenga ā Nuku:

- That the second bullet point in section 6.4.1 references section 6.6 Stopping unformed legal roads e.g.; “Will first attempt to resolve encroachments through voluntary removal, Licence to Occupy, or road stopping (see section 6.6 below)(as appropriate,) before considering legal action.”
- That a new third bullet point be inserted in section 6.4.1, along the lines of; Council “May agree to appropriate alternative public access, at no cost to Council, where an encroachment prevents public access”.
- That a new section be inserted after 6.5.3, along the lines of;  
“When considering applications to facilitate use of unformed legal roads by walkers, cyclists or horse riders, Council will take into account the proposed extent of modification to the surface of the unformed legal road and seek to enable such use wherever possible.”
- That the words “where this is vital for development or” be deleted from section 6.5.2.
- That the words “there is no likelihood of a valid objection being received and” be deleted, as they are not appropriate to the use of section 116 of the Public Works Act 1981.
- That Council work with Herenga ā Nuku when considering applications to stop unformed legal roads.

Staff recommend accepting the reference addition to section 6.4.1.

Staff agree with the potential benefit of a mutually-agreed alternative access but want to ensure this is only considered when appropriate. Staff recommend a new bullet be added to Section 6.4.1- "May consider an appropriate alternative public access, where such an alternative is equal to or better than the existing unformed legal road and can be provided at no cost to Council."

Staff agree with the intent to enable simple access requests but are concerned about the increase in liability (and potentially ongoing maintenance) when Council purposefully clears vegetation or other obstructions from an unformed legal road. Staff recommend reword to “When considering applications to facilitate use of unformed legal roads by walkers, cyclists, or equestrians, Council will consider the proposed extent of modification required to the surface of the unformed legal road, potential for liability, and future maintenance. Any use of Council resources to modify an unformed legal road will need to be approved by Council.”

Staff are not aware of a clear issue caused by developers accessing from unformed legal roads. Staff do not recommend accepting this change.

Staff note the policy is set up to frame outreach to relevant affected parties and would recommend against prioritising one potential stakeholder over others.

## 7.0 Roadside management

Herenga ā Nuku:

- That section 7.1.3 is expanded by adding “.. providing that public access is not obstructed.”
- That the first sentence in section 7.5.4.4 be amended to read “Plantings will be considered a nuisance by Council if they create a safety risk or interfere with road maintenance, drainage, ~~or~~ utility services **or public access.**”
- That an additional bullet point be included in section 7.5.6.3 - “Public access, community connectivity and active transport”

Staff recommend accepting changes for sections 7.1.3 and 7.5.4.4. Staff recommend including "Impacts on public access," in first bullet of section 7.5.6.3.

## 7.3 Grazing on road reserve

North Canterbury Federated Farmers:

- We are concerned that the new ‘grazing restricted areas’ proposed in the policy are overly restrictive. Many farmers benefit from being able to graze stock in the road reserve, and removing this ability may disrupt their farming operations. We suggest the Council do not proceed with restricting grazing on any roads until targeted landowner consultation has been carried out. We have been advised that no consultation has taken place in the development of this policy to date.

Staff agree with the benefit farmers gain from grazing in the road reserve as well as the benefit that Council gains in this land management of the berm. The proposed change aims for consistency by including all rural Collector and Arterial Roads, whereas the present policy only includes some of this network. This change is proposed because the risk of higher speed and higher volumes (most roads proposed for addition to the policy have 100 km/h speed limits and volumes > 1,000 ADT) means roadside grazing poses a safety concern.

Staff estimate that approximately half of the properties noted in the submission have frontages with total grazing bans under the existing policy.

Almost all affected properties also have partial grazing restrictions (present policy bans grazing on portion of berms mown by Council contractor, which includes all rural Collector and Arterial Roads).

Staff recommend consideration of the full proposed policy but deferral of any changes to the grazing restrictions list in Appendix A at this time. A list of the existing grazing restriction areas can be found in Attachment viii. Staff further recommend that the properties affected by the change are clearly identified and a targeted letter is sent to all properties within the affected areas that do not already have a total grazing ban along their frontage. As a result of this targeted consultation, staff will prepare a future report for consideration of changes to the grazing restrictions list.

8.0 Vehicle crossing surfacing	
<p>M. Beckett:</p> <ul style="list-style-type: none"> <li>The CP for vehicle Crossings (and the council checking and enforcing) is inadequate where the crossing crosses or interrupts the flow of a swale. There are several on North Eyre Rd between Two Chain and Browns, that interrupt a swale and as a consequence flood out onto the road. This is a significant hazard as when it's wet and dark it is not possible to see and vehicles get dragged off the road into even deeper water. I would like to see the policy include wording (and compliance with enforcement) to include something to ensure the natural water flows are not interrupted when a vehicle crossing is consented. It would also be useful if the swales and natural drainage flow paths are maintained and silt and buildup is removed. Many times water sits and soaks the road base which means that at some stage the council will be required to fix it at an even greater cost, than prevention by clearing every few years.</li> </ul>	<p>Council is considering more drainage detail and requirements for new vehicle crossings within an update to the ECoP Roding chapter and associated standard drawings. Staff do not recommend accepting this change.</p>
9.0 Stock underpass	
<p>North Canterbury Federated Farmers:</p> <ul style="list-style-type: none"> <li>Stock underpasses allow for increased road safety and savings on road maintenance. The Policy delegated discretion for stock underpass approval to the General Manager, Utilities and Roding. We agree with this delegation but request the Policy include a statement: Approval for a stock underpass will not be unreasonably withheld.</li> </ul> <p>Herenga ā Nuku:</p> <ul style="list-style-type: none"> <li>That section 9.2.1 be amended along the lines of;          "With approval from the Council, a person may erect a <del>swing fence with a suitable</del> gate or cattle stop, <del>and associated fencing</del>, across an unformed legal road in accordance with s 344 <del>or 357</del> of the Local Government Act 1974. A sign must be affixed to the gate indicating it is a public road."</li> </ul>	<p>Staff note this policy wording has not materially changed from existing policy and are concerned that "will not be unreasonably withheld" creates a vague expectation for approval which cannot be measured. Staff are unaware of historical issues with underpasses being refused without proper justification. Staff do not recommend addition of text as requested by North Canterbury Federated Farmers.</p> <p>Staff recommend accepting the change from Herenga ā Nuku.</p>
10.0 Temporary traffic management	
<p>North Canterbury Federated Farmers:</p> <ul style="list-style-type: none"> <li>While not the likely intention of the Council, we note that the temporary traffic management section (section 10) does not disclose whether a Traffic Management Plan is required for stock movement. As per the Council's Stock Movement Bylaw 2020, stock droving is permitted (provided conditions are met). For clarity purposes, we therefore recommend the Policy includes a statement to this effect.</li> </ul>	<p>Staff recommend addition of "The movement of stock is covered under the WDC Stock Movement Bylaw, which outlines the requirements for permitting and traffic control while moving stock along or across the road."</p>

## 12.0-13.0 Definitions, Relevant documents and legislation

Herenga ā Nuku:

- Definition of "Road Reserve" - That Council use the term 'road corridor' and not 'road reserve'.
- Definition of "Unformed Legal Road" - That the definition be amended to read;  
"Unformed Legal Road (~~sometimes referred to as also~~ Paper Road) – land that has been ~~legally~~ established as a ~~legal~~ public road ~~prior to 1996~~ but which is not formed or maintained by the Council or the New Zealand Transport Agency ~~as a public road~~"
- That under the Local Government Act 1974, the note to Part 21 be (managing ~~unformed~~ roads), and that s.344 (gates and cattle stops) and s357 (penalties for damage to roads) be added to the bullet points.
- That "Guidelines for the Management of Unformed Legal Roads" (Herenga ā Nuku Aotearoa) be cited as a relevant document.

Staff recommend accepting the changes from Herenga ā Nuku.

## Appendix C – Unformed legal road occupation requirements

Herenga ā Nuku:

- That the first bullet point in Appendix C (ULR occupation) be expanded to read;  
"Public access along the road must not be obstructed, ~~and such access may include with~~ ~~motorised vehicles, bicycles and horses~~. A minimum traversable width of 4m must ~~always~~ be maintained ~~at all times~~ ~~and the access must be as practical and desirable for the user as possible.~~"

Staff note that the legal right for unrestricted public access should be balanced against adjacent landowners' rights not to have their stock or land disturbed, as well as the benefits of land management when an adjacent landowner is responsibly caring for an unformed legal road. Physical barriers outside of the control of Council or the adjacent landowner obstruct complete access along unformed legal roads in many circumstances (e.g., streams). As such, staff recommend modification of the first bullet to "Public access along the road must not be obstructed, and such access could be by modes such as motorised vehicles, bicycles, foot, and/or horses..."

## Appendix C – Road reserve grazing requirements

### North Canterbury Federated Farmers:

- We suggest Appendix C (Grazing requirements) is updated to state: The period of grazing shall be 14 days or less at any one time unless there are ten or less animals grazing. Alternatively, this statement could be removed in entirety.
- The use of waratahs is not allowed for use in berms under the policy. Waratahs provide a more stable type of fencing than other temporary fences and therefore are more useful to ensure stock do not get out when grazing the road reserve. However, we do acknowledge a potential safety concern with their use. We suggest the policy is updated to permit waratahs provided they are marked or painted with a bright colour to ensure they are easily visible.
- The Policy requires 'suitable labels' to notify the public of live fences. This is appropriate in areas of high foot traffic (such as urban fringes) but is less relevant in rural areas.

### Herenga ā Nuku:

- That an additional bullet be included in Appendix C (Grazing Requirements), along the lines of; "Where public access on the frontage/berm is expected and/or warranted, it shall be provided for."

Staff note that the grazing period restriction in Appendix C has not changed from existing policy, and are concerned that any increase in length of grazing could result to impacts to berm vegetation or animal welfare.

Waratahs represent a hazard to vehicles and non-motorised users, which is not mitigated by highlighting with a bright colour. Their use is commonly banned on roads in other RCAs, as when hit they can become a projectile.

Pedestrians and equestrians may be present on the berm across the bulk of the rural road network, as there is a very limited rural off-road pathway network. It is noted that similar signage requirements are often in place in other RCAs without any limitation on areas. Staff do not recommend accepting requested changes from NCFF.

Staff recommend insertion of "Public access on the frontage / berm should be accommodated where practicable." This wording is intended to balance between where roadside users are more likely to be encountered (and thus be accommodated).

### **Implications for Community Wellbeing**

- 4.6. There are implications on community wellbeing from the issues and options that are the subject matter of this report. The draft policy has been reviewed and updated by relevant staff across Council, to ensure it reflects current requirements and practices as these affect activities and responsibilities of Council and the general public.
- 4.7. Policies have an underlying purpose of ensuring the Council undertakes its activities and manages its assets where there is an interface with the public in a way that provides for safety and transparency while also demonstrating fairness and equity for our community. These documents establish responsibilities and obligations for third parties, in situations where requirements and/or roles are not otherwise clearly specified through legislation, regulation, standards, or industry guidance.
- 4.8. The Management Team has reviewed this report and support the recommendations.

## **5. COMMUNITY VIEWS**

### **5.1. Mana whenua**

Te Ngāi Tūāhuriri hapū are not likely to be affected by or have an interest in the policy's subject matter beyond a general interest as members of the community.

### **5.2. Groups and Organisations**

There are groups and organisations that are likely to be affected by, or to have an interest in the subject matter of this report. They have been given an opportunity to be heard as part of the public consultation process.

### **5.3. Wider Community**

The wider community is likely to be affected by, or to have an interest in the subject matter of this report. Council has undertaken public consultation to afford interested parties the opportunity to have their say and be heard.

## **6. OTHER IMPLICATIONS AND RISK MANAGEMENT**

### **6.1. Financial Implications**

There are not financial implications of the decisions sought by this report.

### **6.2. Sustainability and Climate Change Impacts**

The recommendations in this report do not have sustainability or climate change impacts.

### **6.3 Risk Management**

There are no risks arising from the adoption/implementation of the recommendations in this report. The implementation of the policy within this report ensures current practice addresses risks to both Council and third parties.

### **6.3 Health and Safety**

There are health and safety risks arising from the adoption/implementation of the recommendations in this report. The policy is drafted to ensure health and safety risks for staff and the public are addressed during activities managed by the Council as far as is practicable. The policy will help ensure that the road corridor is managed in a way which provides for safety of the public.

## **7. CONTEXT**

### **7.1. Consistency with Policy**

This is not a matter of significance in terms of the Council's Significance and Engagement Policy.

## 7.2. Authorising Legislation

The Local Government Act 1974 details the role and responsibilities of local government in relation to setting Policy and public consultation.

## 7.3. Consistency with Community Outcomes

The Council's community outcomes are relevant to the actions arising from recommendations in this report. In particular, the following community outcomes are of relevance to the issue under discussion:

### ***Transport is accessible, convenient, reliable, and sustainable:***

- The standard of our District's roads is keeping pace with increasing traffic numbers.
- Communities in our District are well linked with each other and Christchurch is readily accessible by a range of transport modes.

### ***There are wide ranging opportunities for people to contribute to the decision making that effects our District:***

- The Council makes information about its plans and activities readily available.
- The Council takes account of the views across the community including mana whenua.
- The Council makes known its views on significant proposals by others affecting the District's wellbeing.
- Opportunities for collaboration and partnerships are actively pursued.

### ***There is a safe environment for all:***

- Harm to people from natural and man-made hazards is minimised.
- Our district has the capacity and resilience to quickly recover from natural disasters and adapt to the effects of climate change.
- Crime, injury and harm from road crashes, gambling, and alcohol abuse are minimised.

## 7.4. Authorising Delegations

Council at its 6 June 2023 meeting delegated responsibility to the Hearings Panel to hear and consider submissions to the Road Reserve Management Policy consultation.

A further report will be taken to Council from the Hearings Panel for final decision on the Policy.

# Road Reserve Management Policy

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## 1. Introduction

This policy sets out the Waimakariri District Council's (the Council) approach to managing activities within the road reserve. It addresses uses and management requirements in the road reserve that can affect private activities or impose costs on residents, and provides clear guidance to staff and the community.

## 2. Purpose

The purpose of this policy is to clarify controls, responsibilities, and any associated costs for use of the road reserve affecting a wide range of private and public activities.

These expectations are clearly set out so that the requirements are visible to, and can be clearly understood by, all users of the road corridor.

## 3. Scope

This policy provides guidance on management of Council road reserves and establishes:

- Criteria for sealing unsealed rural roads, including funding requirements
- Specifications for the use of unformed legal roads and forming unformed legal roads
- Responsibilities for use, fencing, and maintenance of the road berm
- Requirements for sealing roads and vehicle crossings
- Criteria for forming stock underpasses
- Expectations for temporary traffic management activities.

## 4. Policy objectives

The overarching objective of this policy is to assist the Council to consistently and transparently apply management requirements and cost-share agreements for use of the road reserves, and to ensure fair and equitable outcomes for all parties.

- 4.1. The policy sets out the criteria for sealing unsealed rural roads so that costs and benefits are fairly distributed in accordance with set criteria.
- 4.2. The policy clarifies responsibilities for accessing and using unformed legal roads. It provides a process to consider privately-constructed assets on or under such roads.
- 4.3. The policy ensures that the responsibility for forming and maintaining private accesses on an unformed legal road is clearly with the party requesting and benefiting from the access.
- 4.4. The policy manages rural road boundary fencing and berm grazing to ensure safety for vehicles, pedestrians, and stock and to reduce road maintenance issues.
- 4.5. The policy specifies suitable materials for vehicle crossings to ensure standardisation and limit impacts from future works within the road reserve.
- 4.6. The policy manages the construction of stock underpasses to safely allow stock and farmers to travel from one side of the road to another, and allow road users to pass unhindered.



## 5. Sealed roads

### 5.1. Rural seal extension

This policy is used to assess any requests to seal rural roads with speed limits of 60km/h or greater.

The Council will only seal unsealed rural roads in the following situations:

- When co-funding is approved by the New Zealand Transport Agency (Waka Kotahi)
- When roading financial contributions from subdivisions of at least 30% of the cost of sealing the road have been received by the Council
- When privately funded, as detailed below.

See *Appendix C*: for seal extension technical requirements.

#### 5.1.1. New Zealand Transport Agency Approved Projects

- 5.1.1.1. The New Zealand Transport Agency has set criteria for the funding of seal extensions and few projects are likely to be eligible for, or receive New Zealand Transport Agency co-funding.
- 5.1.1.2. Any roads which meet the New Zealand Transport Agency criteria will be identified and submitted to the Long Term Plan and Regional Land Transport Plan (RLTP) processes for consideration of funding allocation.
- 5.1.1.3. The Council may programme the seal extension in the earliest year funding is available, or bring forward the funding to the following financial year.

#### 5.1.2. Roothing Financial Contribution Projects

- 5.1.2.1. The Council will consider sealing a rural unsealed road when receipted Roothing Financial Contributions from subdivisions reach at least 30% of the cost of sealing the road.
- 5.1.2.2. Funding for these projects will come from the Subdivision contribution budget.
- 5.1.2.3. The Council may at its discretion, attempt to obtain subsidy from the New Zealand Transport Agency either fully or by using the contributions to offset the capital cost of the work. However, the sealing will be programmed for completion, whether New Zealand Transport Agency approval is obtained or not.

#### 5.1.3. Private Funding of Seal Extension

- 5.1.3.1. The Council will consider sealing existing roads where the adjoining property owner(s) is willing to fund 50% of the cost of the sealing.
- 5.1.3.2. Seal extensions up to a total length of 1km per year may be approved by the General Manager, Utilities and Roothing, under delegated authority, subject to the following conditions:
  - Those requesting the work will pay 50% of the cost. The balance shall be funded as a deficit balance within the current years roading account.
  - Any additional works required to support the seal extension (e.g., signs, markings, drainage) will be included in the cost apportionment. Any works required to address existing deficiencies will be covered by Council.
  - The design and tender for the seal extension work will normally be prepared by the Council and all physical work will be organised by the Council. Those requesting the work will pay 50% of the costs of design, tender and construction of the physical works.

- The sealed road will remain the property of the Council in accordance with the Local Government Act 1974 s317.
- Future maintenance, including resealing, will be the responsibility of the Council.

## **5.2. Sealed road surfacing**

- 5.2.1. Generally, the most appropriate and cost-effective sealed road surfacing is chip seal. By default, all roads and streets which Council agree to seal shall be surfaced with chip seal to ensure the lowest lifecycle cost is achieved, unless other surfacing is considered appropriate based on the technical grounds noted below.
- 5.2.2. Asphaltic concrete (hotmix) is more durable with less noise and vibration, but its usage incurs a higher lifecycle cost. Its use will require approval by the General Manager, Utilities and Roding.
- 5.2.3. Asphaltic concrete (hotmix) may be used to seal Strategic and Arterial Roads with speed limits of 50 km/hr or less, and with urban scale development on both sides of the road.
- 5.2.4. Asphaltic concrete (hotmix) or similar surfacing may also be used on selected streets within the town centres or on other roads and bridges on a case-by-case basis.
- 5.2.5. Asphaltic concrete (hotmix) or similar surfacing may be used in cul-de-sac heads, at intersections with large numbers of heavy turning vehicles, and in any other area where it is the most appropriate technical and cost-effective option. It is used in situations where there are high vehicle turning movements to reduce the wear and tear from turning vehicles.
- 5.2.6. Asphaltic concrete (hotmix) or similar surfacing may also be used, on an exceptions basis, where it is technically considered the most appropriate solution to address inconsistencies in vertical and horizontal alignment in some streets.
- 5.2.7. In situations where streets are already surfaced with asphaltic concrete (hotmix) or similar material, but are not consistent with this policy and require resurfacing, they will be resurfaced with asphaltic concrete (hotmix) or similar surfacing unless there are compelling technical and / or cost reasons for not doing so.

## 6. Unformed legal roads

This policy specifies controls on the use, access, and maintenance of unformed legal roads, also known as paper roads.

### 6.1. Public use of unformed legal roads

- 6.1.1. The Council has a responsibility under the Local Government Act 1974 (Part 21) and Land Transport Act 1998 (Part 3) to ensure that the public right of passage along unformed legal road corridors is preserved while protecting the environment, the road and adjoining land, and the safety of road users.
- 6.1.2. Herenga ā Nuku Aotearoa - the Outdoors Access Commission was established pursuant to the Walking Access Act 2008 to lead, support, negotiate, establish, retain, and improve access to the outdoors. The rights and responsibilities in the Outdoors Access Commission's Outdoor Access Code should be adhered to when using unformed legal roads.
- 6.1.3.
- 6.1.4. While there is no specific statutory right to use a motor vehicle on any road, where the terrain permits, vehicles may be used on unformed legal roads, unless this is prevented or restricted through a bylaw or other enactment.
- 6.1.5. Road corridor users must not modify, obstruct, or damage the surface of unformed legal roads, except in accordance with the provisions of this policy.
- 6.1.6. Most unformed legal roads will not have clearly delineated areas set aside for different types of users. Vehicles, pedestrians, bicycles, and horses are likely to share the same space. Unformed legal roads are considered "shared zones" available for use by pedestrians, cyclists, equestrians, and motorists, as per the purpose of Land Transport (Road User) Rules 2004. This means that motorists must give way to pedestrians, but pedestrians must not unduly impede the passage of any vehicle.
- 6.1.7. Due to the risk posed to other road users, the road surface, and adjoining property and vegetation, the Council does not permit the lighting of fires on unformed legal roads.
- 6.1.8. Unformed legal roads are public places for the purposes of the Arms Act 1983. Therefore, the discharging of a firearm on an unformed legal road so as to endanger property, annoy, or frighten any person is prohibited.

### 6.2. Maintenance of unformed legal roads

- 6.2.1. The Council is not obligated to, and does not generally intend to:
  - Maintain or repair damage to unformed legal roads
  - Fence unformed legal roads
  - Inspect, identify, or mitigate any road safety issues on unformed legal roads
  - Signpost or otherwise mark unformed legal roads.
- 6.2.2. The Council is obligated to inspect and maintain non-roading assets that it has purposefully installed in unformed legal roads, such as drainage or forestry blocks.
- 6.2.3. Adjacent landowners are generally responsible for fencing, vegetation control, and pest plant management. The Council should be consulted before removing any exotic non-pest trees or hedges. Naturally-occurring indigenous vegetation shall not be removed or disturbed without written approval from the Council. This is particularly relevant where there are features of ecological importance or Significant Natural

Areas; refer to the District Plan for more details. Exceptions may be considered on a case-by-case basis.

### **6.3. Private occupation and encroachments in unformed legal roads**

- 6.3.1. The Council recognises that a range of activities may wish to make use of, or locate on, unformed legal roads. The Council will consider requests for occupation of an unformed legal road on a case-by-case basis.
- 6.3.2. Approved requests for occupation will be formalised through a Licence to Occupy and must comply with this policy and the conditions of that Licence to Occupy. See the Council *Rural Land Lease and Licence Policy* for additional terms.
- 6.3.3. Should the Property Team recommend against granting a Licence to Occupy for occupation of an unformed legal road, such approval is reserved for the Utilities and Roding Committee.
- 6.3.4. The Council recognises that there are a large number of existing occupied unformed legal roads that are not subject to a formal lease or Licence to Occupy. While the Council will endeavour over time to standardise these occupancy activities, this will be governed by the availability of Council staff resources. Priority may be given to unformed legal roads where issues arise in relation to an existing use.
- 6.3.5. See *Appendix C: Technical requirements* for conditions for unformed legal road occupation.

### **6.4. Unauthorised occupation**

- 6.4.1. Where there is an unauthorised encroachment on an unformed legal road, the Council:
  - Will investigate complaints about encroachments
  - Will first attempt to resolve encroachments through voluntary removal, Licence to Occupy, or road stopping (as appropriate) before considering legal action
  - May remove, or require removal of, unauthorised encroachments that obstruct or impede public access, at the cost of the party responsible, unless exceptional circumstances exist in relation to the encroachment (including a public benefit).

### **6.5. Formation of unformed legal roads**

- 6.5.1. The Council is not obligated to, and does not generally intend to, form, or improve unformed legal roads.
- 6.5.2. However, the Council will consider requests from adjacent property owners, developers, and interest groups to construct carriageways, cycle tracks, bridle paths, and footpaths within unformed legal roads at the applicant's expense, where this is vital for development or where significant public benefits are clearly demonstrated.
- 6.5.3. A written application is to be made and approval given in writing by the General Manager, Utilities and Roding, before any physical works start in the road reserve.
- 6.5.4. Developers and subdividers seeking to use unformed legal roads are required to seek approval to form and/or upgrade roads to a Council-standard as part of the subdivision process.
- 6.5.5. When a request is received for a formation on an unformed legal road, the applicant will be advised that, should the request be approved, the following options are available:
  - The applicant forms the road to the Council's roading standards and specifications, or

better. Approval of a Council-standard road is to be subject to the following conditions:

- All work is to be at the expense of those requesting it.
- All work is to be in accordance with the Council's specifications and to its standards.
- The standards and specifications used for the work are to be those adopted and in use for similar access to similar properties upon subdivision.
- Where it is agreed by the Council that the road is to be vested, future maintenance of the road (to appropriate standards) will become the responsibility of the Council following acceptance of the construction work from the contractor or completion of the civil maintenance period.
- The applicant forms the road to a lesser standard than the Council requires, in which case on-going maintenance will be at the property owner's expense. The applicant is also advised that if this option is chosen, they will not be able to restrict or control public access to or along the upgraded section of public road. Approval of a lesser-standard access requires an encumbrance to be registered against the title(s) of the applicant's lot(s) recording their responsibility to maintain that part of the road.
- The applicant may alternately request the Council stop the road. This would remove the legal road status and enable the sale of the section of land if approved. See Section 6.6 for more details on road-stopping.

6.5.6. Where a formed access is requested for a section of unformed legal road that adjoins two or more properties, notice will be given to the other adjoining landowner(s) of the application, giving them 20 working days to respond with their view. Where more than one adjoining landowner wishes to use the same section of unformed legal road along a shared boundary, the Council will encourage all parties to agree on the arrangements. Where agreement is not reached, the Council will use its discretion as to how the occupation is divided.

6.5.7. Where any dwelling house was lawfully erected prior to 23 January 1992, and it has sole access to an unformed or substandard legal road, then the Council will contribute up to 50% of the cost of upgrading to the Council's standard, to be funded as a subdivision commitment.

## **6.6. Stopping unformed legal roads**

6.6.1. Where a road is proposed to be stopped, the Council will generally follow the Local Government Act 1974, section 342 process. The Public Works Act 1981, section 116 process will only be used in exceptional circumstances where there is no likelihood of a valid objection being received and doing so is deemed to be in the public's interest.

6.6.2. Any applicant requesting to stop an unformed legal road should give regard to:<sup>1</sup>

- a. The Council may or may not support the request.
- b. The full costs will be borne by the applicant and the applicant will need to enter into a cost agreement and may be required to pay a deposit for such costs prior to any work being undertaken.
- c. The process the application must follow includes provision for public submissions and the Council has no control over the outcome of that process.
- d. Ultimately, any decision made in the road stopping process is appealable through the Environment Court.
- e. If the stopping is completed, the applicant will be required to purchase the stopped

<sup>1</sup> Section 6.6.2 (c) to (e) only apply in respect of road stopping carried out under the Local Government Act 1974 but would not apply to road stopping carried out under the Public Works Act 1981.

road at an agreed value and amalgamate it with their existing title, at their expense.

6.6.3. In considering applications to stop an unformed legal road, the Council will evaluate the application against:

- Current use – e.g., public walking/driving access, service to land-locked sections
- Strategic value – e.g., connections to water bodies, reserves, conservation land, or some other future strategic need
- Alternatives for public access
- Biodiversity and ecological value – e.g., value of the land to ecosystem services; rarity, representativeness, and density of native flora or fauna
- Future use of the road as proposed by the applicant
- Intended or potential alternative future uses – e.g., walk- or cycle ways, drainage, amenity, recreation uses, significant landscape amenity
- Corridor user safety
- Existing or anticipated infrastructure, encumbrances, and easements.

6.6.4. Where a section of unformed legal road is stopped and freehold title issued, subject to the requirements of the Public Works Act 1981 or any other relevant legislation, the Council may choose to dispose of the land accordingly.



## 7. Roadside management

This portion of the policy specifies requirements for private use of the road reserve for fencing, grazing, storage, and berm management.

### 7.1. Fencing on road reserve

- 7.1.1. New boundary fences adjacent to Council road reserves shall be located on the surveyed property boundary.
- 7.1.2. Replacement boundary fences on Council road reserves not located on the surveyed property boundary are to be relocated onto the surveyed property boundary when replaced.
- 7.1.3. In exceptional cases, when agreed by the Utilities and Roading Committee, existing boundary fences may be retained onto a line that is not on the surveyed property boundary when the adjacent property owner wishes to retain this alignment.

### 7.2. Private entry structures

- 7.2.1. Private entry signs, features, artwork, and monuments will not be permitted within the road reserve.
- 7.2.2. Subdivision entry structures shall be situated on private land and maintained at the cost of the property owner.
- 7.2.3. Private gates must not open into or otherwise obstruct the road reserves.

### 7.3. Grazing on road reserve

- 7.3.1. The grazing of road reserve frontages is not permitted on the following roads:
  - Within the urban area
  - On the roads listed in *Appendix A: Grazing-restricted roads*
  - On the mown verge of sections of road regularly mown by the Council or its contractors
- 7.3.2. The grazing of road reserve frontages is permitted along Council-controlled roads within the District, except those set out above, and is subject to the conditions found in *Appendix C: Technical requirements*.

### 7.4. Temporary storage on road reserve

- 7.4.1. Generally, the Council does not permit temporary storage within the road reserve. Material may not be stored under any circumstances on roads classified as Collector, Arterial, or Strategic Roads within the rural area. See the District Plan for a list of classified roads.
- 7.4.2. Temporary storage may be considered on a case-by-case basis with written approval from the Council. Any temporary storage on the road reserve is subject to the conditions found in *Appendix C: Technical requirements*.
- 7.4.3. An unformed legal road may not be used for storage of any kind, or the long-term parking of any vehicles.

### 7.5. Roadside berm maintenance

This policy does not cover sealed or unsealed Council-maintained footpaths or shared paths.

#### 7.5.1. Berms Adjacent to Council Property

The Council will maintain grass berms outside Council property including reserves,

cemeteries, community facilities (e.g., pools, halls, community centres, and libraries), gravel pits, forestry blocks, and rental housing. The mowing will be managed either directly by the Council, via committees, or in accordance with lease conditions where the Council property is leased.

#### 7.5.2. Berms Adjacent to Private Property

- 7.5.2.1. The Council will not maintain berms or frontages of private property, except where otherwise provided for in this policy.
- 7.5.2.2. The Council expects that berms will be covered in natural turf and maintained in a clean and tidy condition by the adjoining property owner to ensure safe space for all road users and prevent erosion of roadside drains.
- 7.5.2.3. Refer to *Appendix D: Approved berm planting* for a list of natural turf species approved for planting on a berm.
- 7.5.2.4. Permanent landscaping and decoration are not permitted on or in berm areas as these areas are reserved for utility and public access only.
- 7.5.2.5. Berms along many rural Collector and Arterial Roads are mown regularly for a nominal distance off the road for traffic safety reasons. Adjoining property owners are responsible for maintaining the remainder of the berm.
- 7.5.2.6. Adjoining property owners are responsible for the removal of any noxious weeds or pest plants growing in rural berms. A list of pest plants is maintained by Environment Canterbury; for more details, see the *Canterbury Regional Pest Management Plan*.
- 7.5.2.7. The Council does not generally maintain berms that contain stormwater conveyance and treatment such as swales, drains, or overland flow paths, although within Drainage Rated Areas, the Council does maintain a limited number of designated drains located within berms. Adjoining property owners are encouraged to maintain these berms, but may apply to the Council for an exemption as per section 7.5.3.
- 7.5.2.8. Stockwater races in the berm are required to be maintained by adjoining property owners in accordance with the Council's *Stockwater Race Bylaw*.
- 7.5.2.9. The owner or occupier of any undeveloped residential zone property shall ensure that grass and other vegetation within the property boundaries is maintained in accordance with the Council's *Property Maintenance Bylaw*.

#### 7.5.3. Exceptions for Berms Adjacent to Private Property

- 7.5.3.1. Property owners can apply in writing to the Council for an exemption to the requirement to maintain the berm adjoining their property.
- 7.5.3.2. Any requests for an exemption will be evaluated on a case-by-case basis using the following criteria:
  - Whether the berm is a stormwater conveyance and treatment area that requires mowing to ensure it operates efficiently or it meets regulatory requirements
  - The berm design and whether its maintenance can be safely carried out by the adjoining property owner (e.g., berms that are too steep to be maintained by a hand mower or line trimmer)
  - Whether the berm's maintenance could impact the safety of road network users (e.g., vehicular, pedestrian, equestrian, or cycle traffic)
  - Whether the mowable area of the roadside berm is greater than 400 m<sup>2</sup>



(urban only)

- Special circumstances may be considered on compassionate grounds.

7.5.3.3. Any exemption granted in accordance with section 7.5.3.2 will be at the Council's discretion.

#### 7.5.4. Trees and Hedges Within Berms

7.5.4.1. This policy does not cover consented street trees and street gardens; refer to the Council *Street and Reserve Trees Policy*.

7.5.4.2. Tree and hedge planting within urban and rural road reserves is not permitted without written approval from the Council, to ensure road safety and avoid the Council incurring maintenance costs when the property changes hands.

7.5.4.3. Trees and hedges established before adoption of this policy shall be allowed to remain, provided the plantings are not considered to be a nuisance by the Council.

7.5.4.4. Plantings will be considered a nuisance by Council if they create a safety risk or interfere with road maintenance, drainage, or utility services. The Council may direct the adjoining property owner to remove nuisance trees or hedges at the expense of that owner. The Council should be consulted before removing any nuisance trees.

7.5.4.5. Where historical plantings (other than consented street trees) are allowed to remain within the road reserve, the adjoining property owner is responsible for their maintenance; refer to *Appendix C: Technical requirements* for a list of responsibilities.

7.5.4.6. The Council should be consulted before removing any exotic non-pest trees or hedges. Naturally-occurring indigenous vegetation shall not be removed or disturbed unless the Council considers it to be a nuisance. This is particularly relevant where there are features of ecological importance; refer to the District Plan for more details.

#### 7.5.5. Overhanging trees and vegetation

Overhanging vegetation or other obstructions from property adjacent to any road reserve will be managed as per Section 355 of the Local Government Act 1974. Refer to *Appendix B: Roadway clearance* for more details.

#### 7.5.6. New berms

7.5.6.1. Council contractors are responsible for the establishment and mowing of new grass berms that are sown as part of roadworks, footpath resurfacing, or trenching during the defects liability period. Once the maintenance period of the work has expired, berm mowing will be managed in accordance with this policy.

7.5.6.2. Developers and subdividers are responsible for the establishment and mowing of new grass berms that are sown as part of new development. Once the maintenance period of the work has expired, the berm mowing will be managed in accordance with this policy.

7.5.6.3. When new road reserve is vested with the Council through subdivision or new construction, the land will generally be fully cleared by the property owner prior to vesting. Any Protected Trees or Significant Natural Areas in the District Plan shall be protected. Other significant or notable vegetation should be evaluated on a case-by-case basis by the Council's Roading and Greenspace Units for possible retention by the Council as street trees.

The following factors will be taken into consideration as part of this evaluation:

- Impacts on traffic safety and sightlines
- Ability to realign or redesign proposed works
- Amenity and / or historic value
- Botanical and / or ecological value
- Tree health and form
- Risk of falling limbs or other potential damage to the tree arising from construction processes.

#### 7.5.7. Construction works

- 7.5.7.1. Where existing grass berms are required to be excavated or altered as part of Council maintenance or capital works (including works by utility operators), the Council or the relevant utility operator will re-establish the grass and any Council-installed street trees, plantings, and associated irrigation. Private trees and plantings will not be reinstated. Letter boxes will be reinstated.
- 7.5.7.2. Any construction work undertaken in the berm will require written consent from the Council. Where a property owner arranges work to excavate or alter the berms as a result of works to their property or neighbouring property, the cost of reinstatement of a berm will be met by that owner.

### 7.6. Services in the road reserve

Any activity undertaken which involves excavation or disturbance of the ground within the road reserve requires the Council's authorisation. This includes work which has been granted a resource consent.

Permits to undertake work within the road reserve are issued in accordance with the requirements of the *National Code of Practice for Utility Operators' Access to Transport Corridors* in the form of Corridor Access Requests.

#### 7.6.1. Location of overhead services within the road reserve

- 7.6.1.1. The preferred location for all overhead services will be as far from the road carriageway as practicable, and away from corners and intersections.
- 7.6.1.2. Road safety features which meet recognised standards (e.g., barriers) are required where overhead services cannot be located away from corners and intersections, or within 3m of the edge of the road carriageway. This distance may vary depending on the classification of the road, the size of the service, and the topography at the site.

All associated cabinets and kiosks shall be situated to avoid limiting sight distance, and shall be frangible or protected as per the *National Code of Practice for Utility Operators' Access to Transport Corridors*.

- 7.6.1.3. All new service installations and replacement or changes to existing service installations within the road reserve must have the prior approval of the Council.

#### 7.6.2. Private services within the road reserve

- 7.6.2.1. Installation of private services within the road reserve is generally not supported except in unusual circumstances (e.g., where no alternative exists on private property) and with authorisation by the Council through a Licence to Occupy and registration of an encumbrance on the private service owner's property.
- 7.6.2.2. A private service owner will be responsible for the cost of preparing a Licence to

Occupy and encumbrance (including registration), installing the service, making good the road surface as required, maintaining the service during the term of that Licence, and relocating the service should construction of new Council infrastructure within the road reserve create a conflict.

- 7.6.2.3. As-built plans shall be provided to the Council by the service owner once installation is complete.

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## 8. Vehicle crossing surfacing

### 8.1. Surfacing standard

8.1.1. The Council defines standard surfacing material for driveways as follows:

- Urban areas: asphaltic concrete or broomed concrete
- Rural areas (including rural residential zones) for access off sealed roads, other than access solely to paddocks: asphaltic concrete or chip seal
- Rural area unsealed roads and paddock-only access: metal / gravel

8.1.2. Prohibited materials for surfacing vehicle crossings are:

- Stamped concrete and other decorative finishes that do not provide a safe, firm, relatively smooth and comfortable walking surface, are prohibited where they would cross a footpath or be on a main pedestrian route.
- Loose surfaces that could migrate onto the adjacent footpath or roadway, or into nearby drainage channels and gutters, will not be permitted.

8.1.3. If there is a sealed footpath or shared-use path across the property frontage, then the area of path must be reinstated in the same material as the adjoining path, including markings, unless permitted otherwise by the Council.

8.1.4. The path shall be continuous across the vehicle crossing to convey priority to footpath or shared-use path users.

8.1.5. Vehicle crossings at footpaths or shared-use paths may require reinforcing or additional depth of material to accommodate the additional loads from vehicles crossing the path; refer to the Council Engineering Code of Practice for details.

8.1.6. All vehicle crossings shall be constructed and maintained in accordance with the Council's *Vehicle Crossing Bylaw*.

### 8.2. Non-standard vehicle crossing surfaces

Other finishes such as stamped or coloured concrete, exposed aggregate, bevelled or smooth edge cobbles, etc. are considered to be non-standard finishes and may be approved for use subject to the conditions in *Appendix C: Technical requirements*.

## 9. Stock underpass

### 9.1. Underpass standard

- 9.1.1. Refer to the New Zealand Transport Agency *Stock under control (crossing and driving) guidelines* for options to cross stock over a road.
- 9.1.2. Permission to construct a stock underpass will normally be granted by the General Manager, Utilities and Roding, who is hereby delegated that authority.
- 9.1.3. Where the General Manager, Utilities and Roding considers that the request should not be approved, and the matter cannot be resolved through negotiation with the applicant, only the Utilities and Roding Committee may refuse such permission.
- 9.1.4. In granting permission for construction of an underpass, the General Manager, Utilities and Roding shall ensure that the following conditions are imposed:
  - The applicant completes a Stock Underpass Construction Agreement
  - The applicant completes a Stock Underpass Use Agreement and Subsoil Lease Agreement
  - An encumbrance is registered against the title(s) of the applicant's lot(s) recording their responsibilities under the Stock Underpass Use Agreement and Subsoil Lease Agreement.
  - The Council will financially support the construction of each stock underpass only to the extent that the work meets the New Zealand Transport Agency formula for financial support detailed in the New Zealand Transport Agency Planning and Investment Knowledge Base, as it may be amended from time to time.
    - The maximum contribution available is 25% of the total cost of the work. The actual contribution depends on the volume of traffic on the road.
    - The New Zealand Transport Agency policy requires that the funding be from the Minor Safety Improvements Programme. In the event that such funding is not available in the current financial year, the Council will make provision for that expenditure in the next financial year. In this event, should the applicant wish to proceed with the construction earlier than when the Council can provide the financial assistance, the applicant shall carry the full cost and invoice the Council for its share after the commencement of the year in which programme provision is made. Deferment of the Council's contribution shall not alter the requirement for the grantee to comply with the Competitive Pricing Procedures requirements of the Construction Agreement.
  - The General Manager, Utilities and Roding shall report to the Utilities and Roding Committee each grant of a Stock Underpass Construction Agreement that attracts Council financial support.
  - Removal of a stock underpass, in accordance with the conditions contained in the Stock Underpass Use Agreement, may be authorised by the General Manager, Utilities and Roding when requested to do so by the grantee. Alternatively, should the General Manager, Utilities and Roding recommend the closure of an underpass against the wishes of the grantee, such approval is reserved to the Utilities and Roding Committee.

### 9.2. Gates and cattle stops on unformed legal roads

- 9.2.1. With approval from the Council, a person may erect a fence with a suitable gate or cattle stop across an unformed legal road in accordance with s 344 or 357 of the Local Government Act 1974. A sign must be affixed to the gate indicating it is a public road.

- 9.2.2. The Gates and Cattlestops Order 1955 prescribes the form and construction of swing gates and cattle stops which have been authorised to be placed across roads.

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## 10. Temporary traffic management

- 10.1.1. All requests to undertake an activity that varies from the normal operating condition of the legal road, whether it is on a carriageway, footpath, or adjacent to the road, shall include a Traffic Management Plan (TMP). TMPs are also needed for activities outside the legal road, which will affect the normal operating conditions of the road.
- 10.1.2. Activities such as the ones listed below are all situations that are likely to require a TMP to undertake the activity (this is not an exhaustive list):
- Road construction or maintenance activities
  - Construction or maintenance of assets within the road corridor
  - Construction of vehicle crossings
  - Concrete pours where the concrete pump or concrete truck will affect legal road, including a footpath or carriageway
  - Scaffolding installation on or near the footpath
  - Crane or lifting work that requires safety zones to close a traffic lane, footpath or grass berm
  - Multiple deliveries to a site causing congestion on adjacent roadway
  - Tree felling and vegetation maintenance works that require exclusion zones which extend into the legal road or are undertaken from the roadside
  - Community or sporting events that impact the normal operating condition of the legal road.
- 10.1.3. Prior to any such activities starting, a TMP complying with the New Zealand Transport Agency Code of Practice for Temporary Traffic Management (CoPTTM) or relevant temporary traffic management guidance document must be submitted to the Council, and approved by a Traffic Management Coordinator (TMC).
- 10.1.4. Where these requirements are not met, or where activities are deemed to be dangerous or not installed as per an accepted TMP, the Council will require all activity varying the normal operating condition of the road to stop and the area made safe.
- 10.1.5. If the area is not made safe as per CoPTTM or other adopted guidance, Worksafe New Zealand will be notified. The Health & Safety at Work Act 2015 requires Persons Conducting a Business or Undertaking must, so far as is reasonably practicable, provide and maintain an environment that is without health and safety risks.



## 11. Responsibilities

This policy will be implemented by the Roding and Transport Unit of the Council. All-cost sharing agreements under the policy must be approved by the Roding and Transport Manager with additional approvals required as specified in section 5.1.3.2 of this policy.

## 12. Definitions

**Berm (also Verge)** – grassed, soiled, or metalled area between the carriageway and the property boundary.

**Council** – the Waimakariri District Council and includes any person, authorised by the Council to act on its behalf.

**District Plan** – the Council's District Plan and includes any amendments and replacements.

**Fencing** – a barrier or partition enclosing an area to prevent or control access.

**Indigenous Vegetation** – a plant community, of a species indigenous to that part of New Zealand, containing throughout its growth the complement of native species and habitats normally associated with that vegetation type or having the potential to develop these characteristics.

**Licence to Occupy** – a licence which provides permission to use land for an agreed purpose. A licence does not confer a right to exclusive possession of the land.

**Permanent Landscaping** – an area that has been laid out and maintained with plants, including associated structures.

**Road** – has the same meaning as in section 315 of the Local Government Act 1974; and includes a motorway as defined in section 2(1) of the Government Roding Powers Act 1989.

**Road Reserve (also Road Corridor)** – land held by the Council or the New Zealand Transport Agency or any other party as road reserve containing a formed road.

**Rural Area** – an area zoned rural in the District Plan.

**Significant Natural Area** – an area of significant indigenous vegetation and/or significant habitat of indigenous fauna that meets one or more of the ecological significance criteria listed in the District Plan.

**Street Trees** – trees permitted, planted, and maintained by the Council Greenspace Unit within road reserve.

**Unformed Legal Road (also Paper Road)** – land that has been legally established as a public road prior to 1996 but which is not formed or maintained by the Council or the New Zealand Transport Agency as a public road.

**Urban Area** – an area of land that is, or is intended to be, predominantly urban in character and part of a housing and labour market of at least 10,000 people. Refer to the District Plan for a list of urban areas in the Waimakariri District.

**Vehicle Crossing** – the area within public road or other public land from a road carriageway to a property boundary intended for use by vehicles accessing the property.

## 13. Relevant documents and legislation

- Building Act 2004 and Building Regulations (stock underpasses)
- Canterbury Regional Pest Management Plan



- Government Policy Statement on Transport
- Government Roding Powers Act 1989
  - s.55 to 57 (removal of trees, hedges, etc.)
- Land Transport Act 1998
  - s.22AB (making certain bylaws)
- Land Transport Management Act
- Local Government Act 2002
  - s.175 Power to recover for damage by wilful or negligent behaviour (berm management)
- Local Government Act 1974
  - part 21 (managing unformed roads)
  - s.317 (private funding of seal extension)
  - s.319 (formation of paper roads)
  - s.353 (fencing and grazing of roadsides – general road safety provisions)
  - s.355 (control of vegetation on road berm)
- National Code of Practice for Utility Operators' Access to Transport Corridors
- NZTA Bridge Manual
- NZTA Code of Practice for Temporary Traffic Management
- NZTA New Zealand Guide to Temporary Traffic Management
- NZTA Planning and Investment Knowledge Base
- Property Law Act 2007
  - S.332 to 338 (trees and unauthorised improvements on neighbouring land)
- Public Works Act 1981
  - s.116 (stopping roads)
- Street and Reserve Trees Policy
- Transport Act 1962
  - s.72 (making certain bylaws)
- Vehicle Crossing Bylaw 2007
- Vehicle Crossing Information Pack (QP-C289)
- Waimakariri District Council QS-K401: Information regarding installation of stock underpasses
- Walking Access Act 2008

#### 14. Questions

Any questions regarding this policy should be directed to the General Manager, Utilities and Roding in the first instance.

#### 15. Effective date

Date Month 2023

#### 16. Review date

Date Month 2029

#### 17. Policy owned by

General Manager, Utilities and Roding

## 18. Approval

Adopted by Waimakariri District Council on Date Month 2023

DRAFT

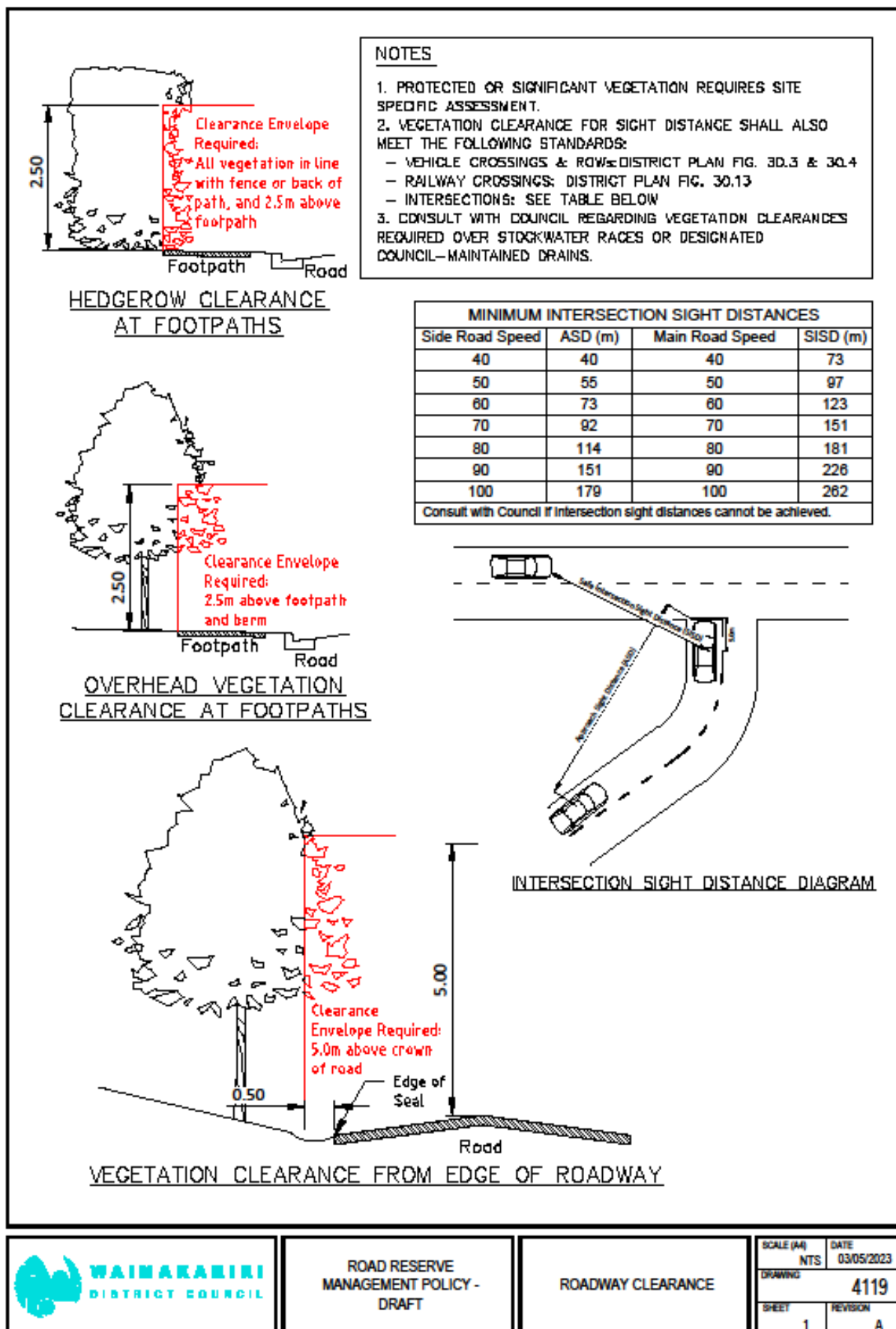
## Appendix A: Grazing-restricted roads

<b>Local Roads</b>	
Loburn Whiterock Road (Hodgsons Road to Chapel Road)	
<b>Collector Roads</b>	
Ashley Gorge Road Beach Road Birch Hill Road Boys Road Carrs Road Fernside Road Fishers Road Gressons Road Harleston Road High Street (Oxford) Hodgsons Road Island Road (Ohoka Road to Tram Road) Johns Road Lower Sefton Road (Toppings Road to Wyllies Road) Marshmans Road Mill Road (Ohoka) Plaskett Road (Oxford Road to Ashworths Road) Rangiora-Woodend Road (Gressons Road to SH1) River Road (Rangiora) South Eyre Road (diversion bridge to Tram Road) South Eyre Road (Depot Road to Tram Road) Swannanoa Road Threlkelds Road Toppings Road (Lower Sefton Road to Upper Sefton Road) Two Chain Road (Swannanoa Road to South Eyre Road) Waikuku Beach Road Wyllies Road	<div>Highlighted road sections have been added to list in existing Grazing Policy</div>
<b>Arterial Roads</b>	
Cones Road (Fawcetts Road to Dixons Road) Dixons Road (Loburn) Fawcetts Road Flaxton Road Kippenberger Avenue Loburn Whiterock Road (Dixons Road to Chapel Road) Main North Road (Kaiapoi) Ohoka Road (SH1 to Skewbridge Road) Rangiora-Woodend Road (Kippenberger Avenue to Gressons Road) Skewbridge Road Tram Road	

Williams Street
<b>Strategic Roads</b>
<p>Ashley Street</p> <p>Cones Road (Milton Avenue to Fawcetts Road)</p> <p>Cust Road</p> <p>Depot Road</p> <p>Milton Avenue</p> <p>Oxford Road</p> <p>Upper Sefton Road</p>

## Appendix B: Roadway clearance

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## Appendix C: Technical requirements

### Seal Extension Requirements

The width of the seal is to be approved by the General Manager, Utilities and Roading in accordance with the Engineering Code of Practice and the District Plan.

Normally this will be 6.0m; however, this may be altered when the nature of the road and its traffic density indicate another width is more appropriate. The absolute minimum width in any circumstance is 4.0m.

All private seal extensions shall have a two-coat wet-coat chip seal surface to ensure that future maintenance costs are able to be shared with the Crown.

Nominal minimum length of seal extension is 100m. The actual length to be sealed is to be approved by the General Manager, Utilities and Roading who will agree an appropriate end-point, having consideration for the road alignment.

The gap to the nearest section of seal is not to be less than 400m providing:

- That the “minimum gap” requirements shall only be enforced at the end of the seal-extension closest to the adjacent sealed surface; and
- Any gap less than that detailed above is to be sealed in accordance with Section 5.1.3.1.

### Unformed Legal Road Occupation Requirements

Any requests to occupy an unformed legal road are subject to the following requirements:

- Public access along the road must not be obstructed. A minimum traversable width of 4m must be maintained at all times.
- Temporary fencing may be installed within an unformed legal road for purposes of stock control but must still allow public access. Permanent fencing may be installed across an unformed legal road at public boundaries but must include an unlocked gate or other means of public passage, where agreed with the Council.
- Occupiers are responsible for maintaining the surface of the unformed legal road to the same or better condition than prior to the occupation commencing. Damage caused to existing infrastructure or fencing through the occupation of the unformed legal road is the responsibility of the occupier to remedy at their cost.
- Occupiers are responsible for controlling all noxious pests and weeds, including as required under the Canterbury Regional Council Pest Management Plan
- Livestock that presents a hazard to the public (e.g., bulls) shall not be permitted to occupy or graze unformed legal roads and must be fenced if grazing or occupying adjoining land.
- ‘Private Property,’ ‘Keep Out’ signs, or similar are only allowed on private buildings and must not be posted in such a way that they are seen as applying to the unformed legal road itself.
- Generally, new structures, permanent landscaping, or planting of trees will not be permitted by the Council within unformed legal roads.
- A Licence to Occupy does not negate any requirement for building or resource consents and the Licence holder is responsible for obtaining all other relevant approvals.

### Road Reserve Grazing Requirements

The grazing of road reserve frontages subject to the following requirements:

- The period of grazing shall be 14 days or less at any one time.
- Stock owners, or their agents, shall not graze the frontage of a third party's property without the permission of that property owner. It is advisable that the stock owner obtains this permission in writing (this does not apply to driven stock)
- Grazed stock shall be fenced so that they cannot stray onto the carriageway. The fence should be clearly visible.
- The fence shall consist of temporary electric fencing to be secured by electric fence standards – i.e., fiberglass, plastic, or light metal standards. The use of waratahs, posts and other more substantial type fencing is not allowed on berms.
- Fences shall comply with the requirements of the Electricity Act 1992 and the Electricity Regulations 1993
- Suitable labels shall be used to notify the public that the fence is live.
- The fence shall be completely clear of the carriageway and road shoulder.
- Horses shall only be grazed upon road reserves when accompanied by a person and fastened to a lead rope.
- All grazing shall be in accordance with the Animal Welfare Regulations 2018
- Livestock that presents a hazard to the public (e.g., bulls) shall not be permitted to occupy or graze formed or unformed legal roads and must be fenced if grazing or occupying adjoining land.
- Where road reserve is used for grazing the adjoining landowner is responsible for sowing and maintaining a grass surface appropriate for both the stock and the public's use of the road.

### **Road Reserve Temporary Storage Requirements**

Temporary storage on the road reserve is subject to the following requirements:

- Written approval must be granted prior to any storage on the road reserve.
- Appropriate temporary traffic management may be required by the Council.
- Materials shall be located a minimum of 5m away from the edge of rural road carriageways.
- Materials storage and access must not cause damage to roading assets, including pavement, berms, kerbs, drainage, and edge marker posts.
- Material may not be stored in a location that obstructs a vehicle crossing, footpath, cycle facility, drainage facility or race, or sight distance, or otherwise impacts road corridor user safety.

### **Berm Trees and Hedges Requirements**

Where permitted or historical plantings are allowed to remain within the road reserve, the adjoining property owner is responsible for the following requirements:

- Removing plantings within the road reserve which impede visibility along the road, at intersections, property access ways, road corners, and signs
- Removing plantings within the road reserve which cause shading of the roadway to the extent that there are significant and identified risks to road users related to mobility and road safety
- Removing overhanging branches or fallen trees which obstruct pedestrians, cyclists, and vehicles, and all tree trimmings and tree debris from the roadside
- Paying costs associated with repairing or reinstating services or damage to the road as a



result of the plantings

- Carrying out any tree maintenance required to avoid services or overhead utilities
- Ensuring that roadside drains are kept clear of tree roots, tree trimmings, and tree debris
- Removing any noxious weeds and pest plants (e.g., gorse and broom).

### **Vehicle Crossing Non-Standard Finish Requirements**

Non-standard finishes may be approved for use on vehicle crossings subject to the following requirements:

- That in the event of an excavation across their frontage it is unlikely that a non-standard surface will be restored to its original appearance.
- That a minimum of 3-100ø ducts to be provided across the full width of the proposed driveway with the information being recorded on the Property Information File and GIS records to enable services to be laid under the driveways without the need for excavating the driveways unless specifically otherwise required
- That the property owner accepts full responsibility for repair and maintenance of the portion of the driveway that is located on road reserve
- That should a footpath ever be built across the frontage of their property the portion of the non-standard driveway that would form part of the path may be replaced with a standard surface.

## Appendix D: Approved berm planting

The following species are considered suitable for planting on berms:

- Perennial dwarf ryegrass
- *Dichondra repens*
- *Selliera radicans*
- *Acaena inermis*
- *Pratia angulata*
- *Leptinella* sp.

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## Survey Responses

21 February 2020 - 10 September 2023

# Road Reserve Management Policy Survey

## Let's Talk Waimakariri

Project: Road Reserve Management



VISITORS					
14					
CONTRIBUTORS			RESPONSES		
1			1		
1	0	0	1	0	0
Registered	Unverified	Anonymous	Registered	Unverified	Anonymous

# Project Report

21 February 2020 - 10 September 2023

## Let's Talk Waimakariri Road Reserve Management



### Visitors Summary



### Highlights

TOTAL VISITS	256	MAX VISITORS PER DAY	39
NEW REGISTRATIONS	2		
ENGAGED VISITORS	6	INFORMED VISITORS	74
		AWARE VISITORS	198

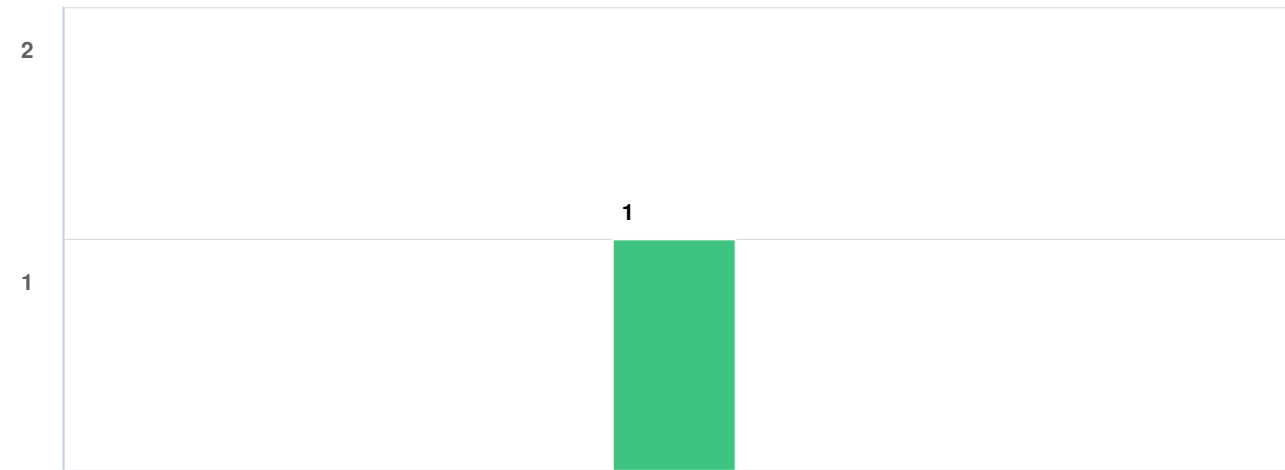
Aware Participants		198		Engaged Participants		6					
Aware Actions Performed		Participants		Engaged Actions Performed		Registered		Unverified		Anonymous	
Visited a Project or Tool Page		198									
Informed Participants		74		Contributed on Forums		0		0		0	
Informed Actions Performed		Participants		Participated in Surveys		1		0		0	
Viewed a video		0		Contributed to Newsfeeds		0		0		0	
Viewed a photo		0		Participated in Quick Polls		3		2		0	
Downloaded a document		53		Posted on Guestbooks		0		0		0	
Visited the Key Dates page		0		Contributed to Stories		0		0		0	
Visited an FAQ list Page		0		Asked Questions		0		0		0	
Visited Instagram Page		0		Placed Pins on Places		0		0		0	
Visited Multiple Project Pages		59		Contributed to Ideas		0		0		0	
Contributed to a tool (engaged)		6									

# ENGAGEMENT TOOL: SURVEY TOOL

## Road Reserve Management Policy Survey

Visitors 14	Contributors 1	CONTRIBUTIONS 1
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Do you agree with the broad purpose, scope and objectives of the draft Policy?



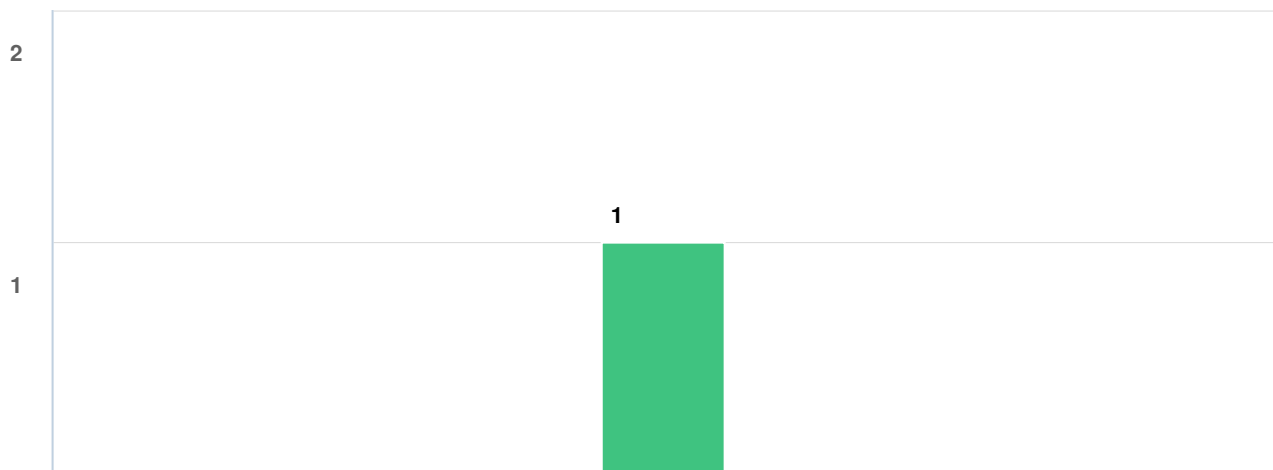
Question options

Yes

Optional question (1 response(s), 0 skipped)

Question type: Checkbox Question

### Do you agree with the sealed road section of the draft Policy?



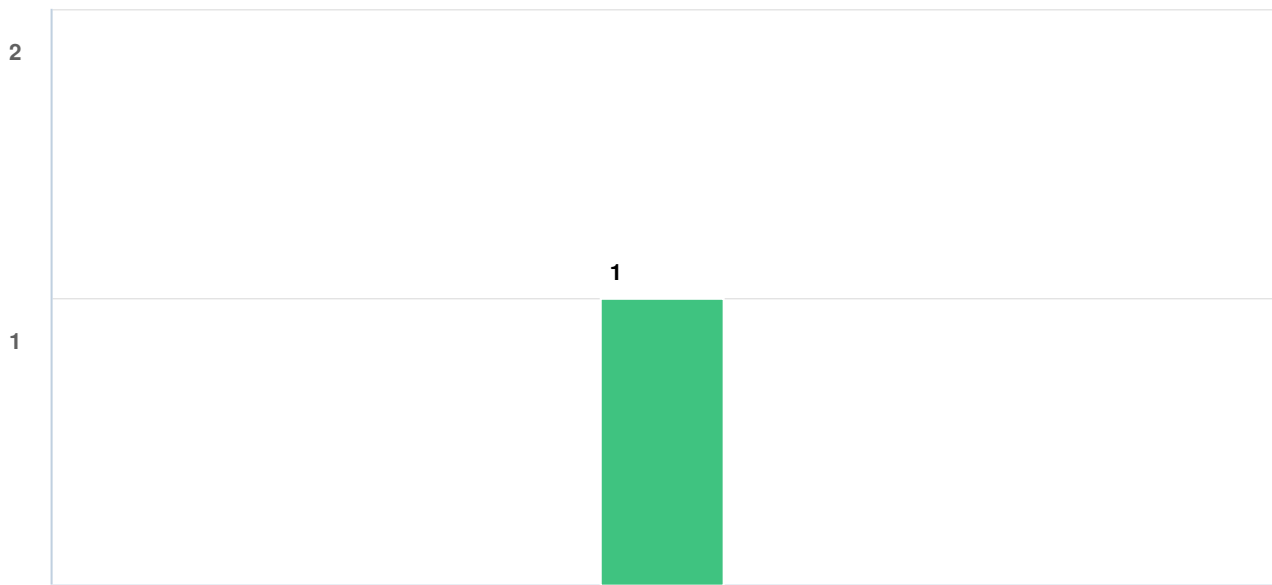
#### Question options

☒ No

*Optional question (1 response(s), 0 skipped)*

*Question type: Checkbox Question*

### Do you agree with the proposed management of paper roads?



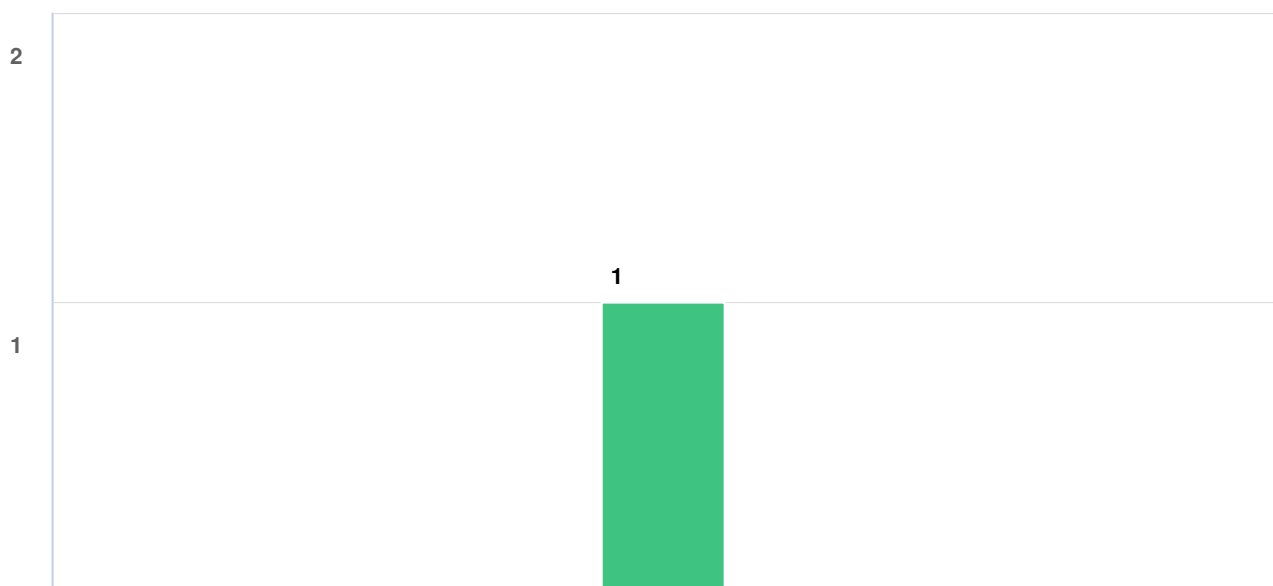
#### Question options

☒ Yes

*Optional question (1 response(s), 0 skipped)*

*Question type: Checkbox Question*

### Do you agree with the limitations on temporary storage allowed on road reserve?



#### Question options

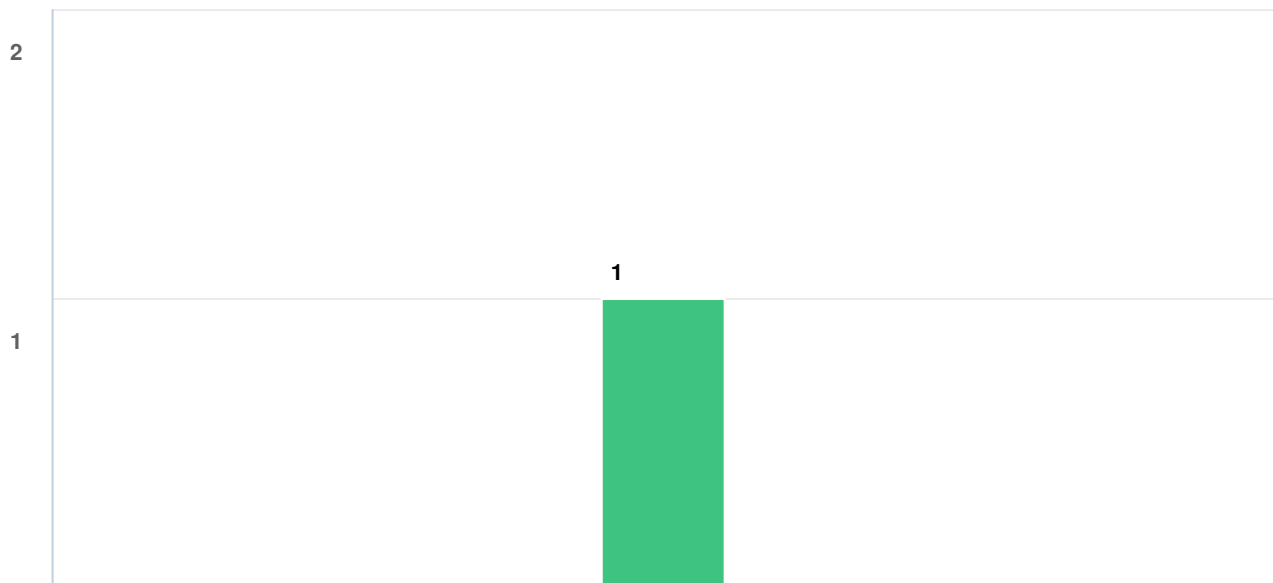
☒ Yes

*Optional question (1 response(s), 0 skipped)*

*Question type: Checkbox Question*



**Do you agree with formalising the current practice of berm maintenance (adjacent residents are responsible)?**



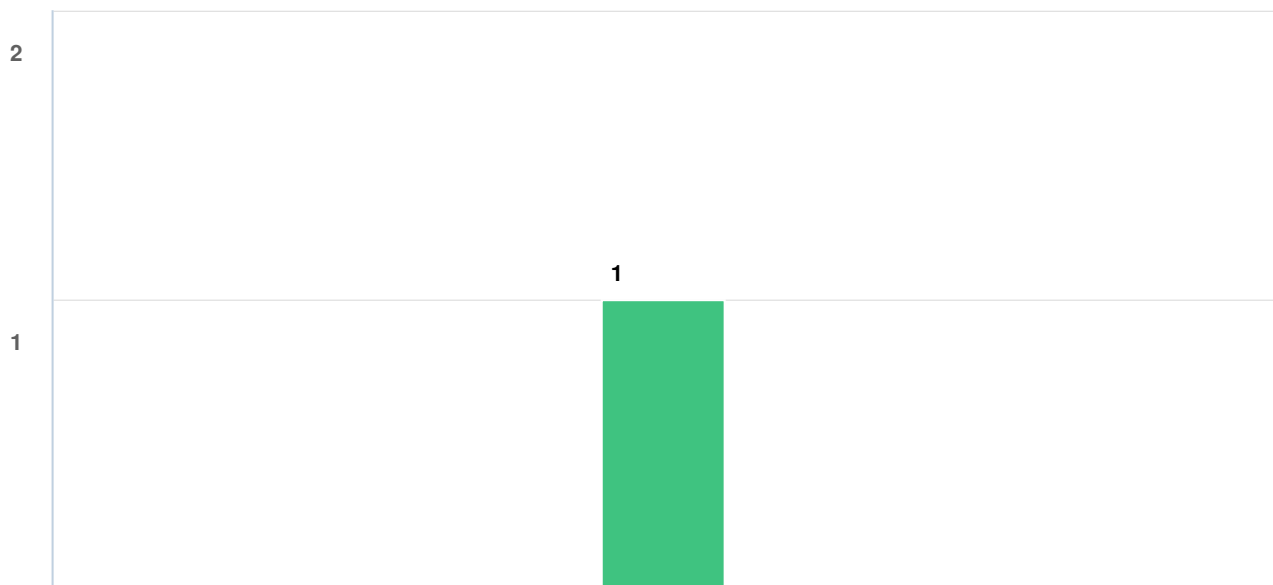
**Question options**

☒ No

*Optional question (1 response(s), 0 skipped)*

*Question type: Checkbox Question*

### Do you agree with the list of proposed permitted berm plantings in Appendix D?



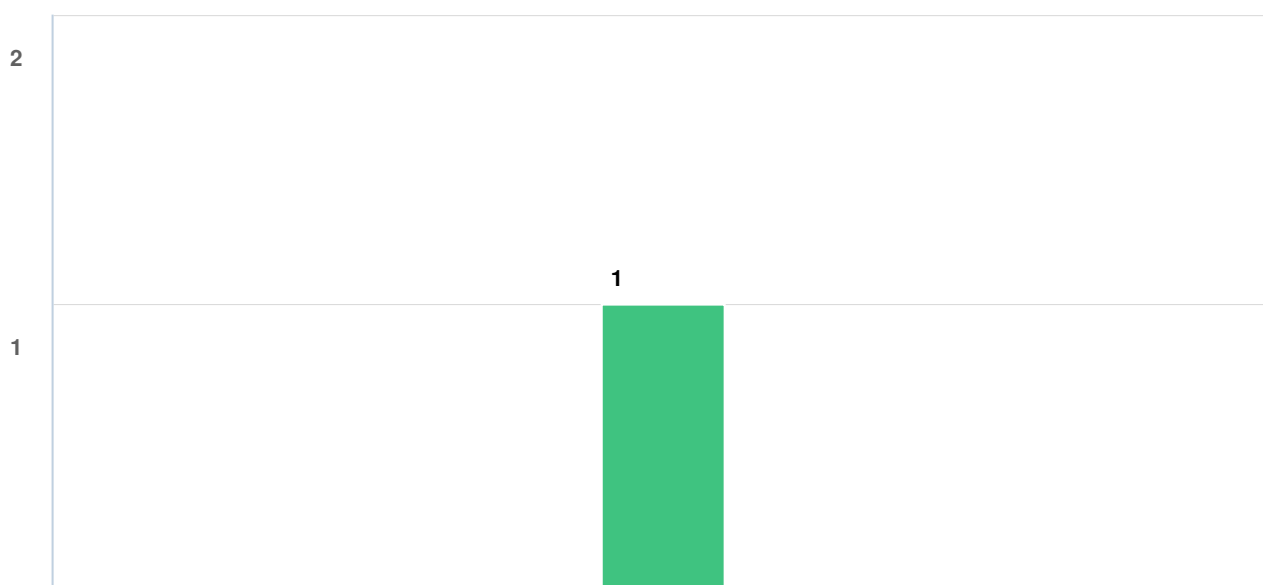
#### Question options

☒ No

Optional question (1 response(s), 0 skipped)

Question type: Checkbox Question

### Do you agree with the process for the Council to take on selected berm maintenance?



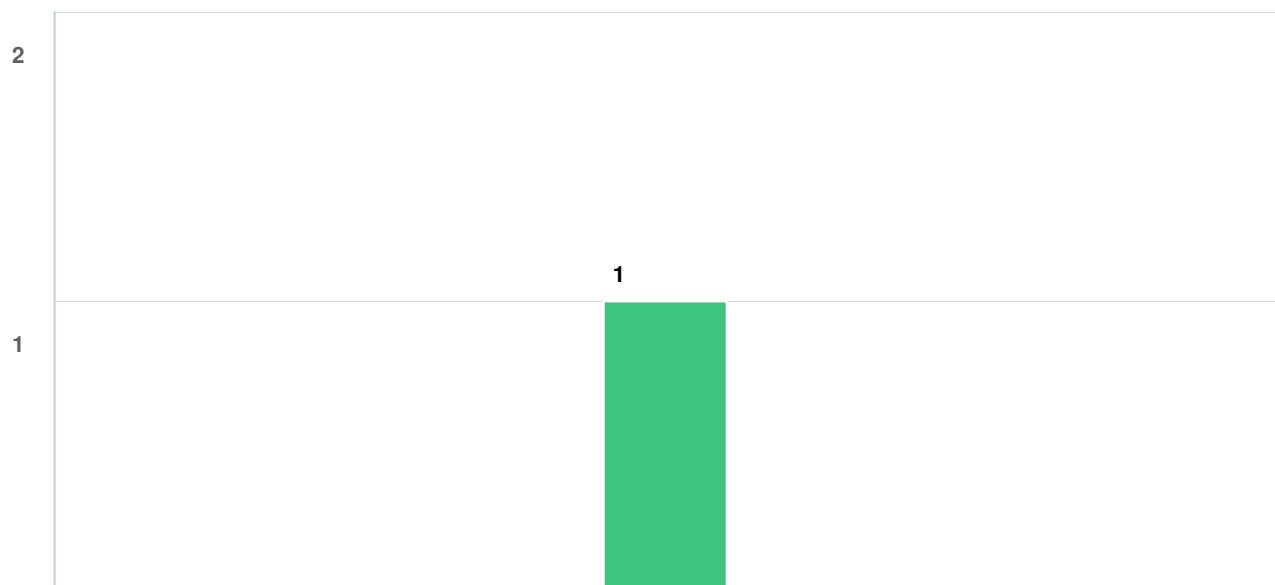
#### Question options

☒ Yes

*Optional question (1 response(s), 0 skipped)*

*Question type: Checkbox Question*

### Do you wish to be speak to the Hearings Panel about you submission?



#### Question options

☒ No

*Optional question (1 response(s), 0 skipped)*

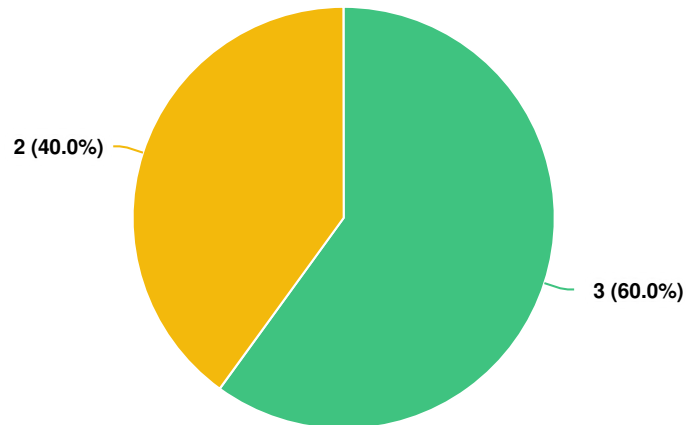
*Question type: Checkbox Question*

## ENGAGEMENT TOOL: QUICK POLL

Do you support changes in the draft Policy?

Visitors	5	Contributors	5	CONTRIBUTIONS	5
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Do you support changes in the draft Policy?



### Question options

● Yes ● No

Mandatory Question (5 response(s))

Question type: Radio Button Question



Respondent No: 1

Login:

Email:

Responded At: Aug 08, 2023 17:12:22 pm

Last Seen:

Sep 02, 2023 04:41:10 am

IP Address:

Q1. Do you agree with the broad purpose, scope and objectives of the draft Policy? Yes

Q2. Any other comments?

not answered

Q3. Do you agree with the sealed road section of the draft Policy? No

Q4. Any other comments?

You have failed to recognise safety along dust mitigation and simply made it about money or specifically when the government contributes.

Q5. Do you agree with the proposed management of paper roads? Yes

Q6. Any other comments?

not answered

Q7. Do you agree with the limitations on temporary storage allowed on road reserve? Yes

Q8. Any other comments?

not answered

Q9. Do you agree with formalising the current practice of berm maintenance (adjacent residents are responsible)? No

Q10. Any other comments?

The berm is council property. WIL do not consider the landowner when they clear the stock water race and just dump it onto the berm. Same as the clearance of a diverted natural watercourse on North Eyre Rd. Why should the landowner wreck their equipment looking after the council land.

Q11. Do you agree with the list of proposed permitted berm plantings in Appendix D? No

Q12. Any other comments?

7.5.5 Overhanging Trees. Not once has the council made any effort to remove the trees overhanging into the diverted natural watercourse on the north side of North Eyre east of Browns Rd.

Q13. Do you agree with the process for the Council to take on selected berm maintenance? Yes

**Q14. Any other comments?**

Council has been remiss for many years on clearing of swales and other natural drainage. This has resulted in property damage and ratepayers inconvenienced when it was preventable.

---

**Q15. Please let us know if you have any other general feedback or comments?**

WDC seems to have an ECP which is "for developers to follow" but fails to lead by example. How can you expect ratepayers to adhere to the guidelines and rules, when the council and its contractors fail. There are multiple occasions when prevention would save the ratepayers money but is missed.

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**Q16. Do you wish to be speak to the Hearings Panel about your submission?** No

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**Q17. If you answered yes to the above please provide your name:** not answered

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**Q18. Email Address:** not answered

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**Q19. Phone number:** not answered

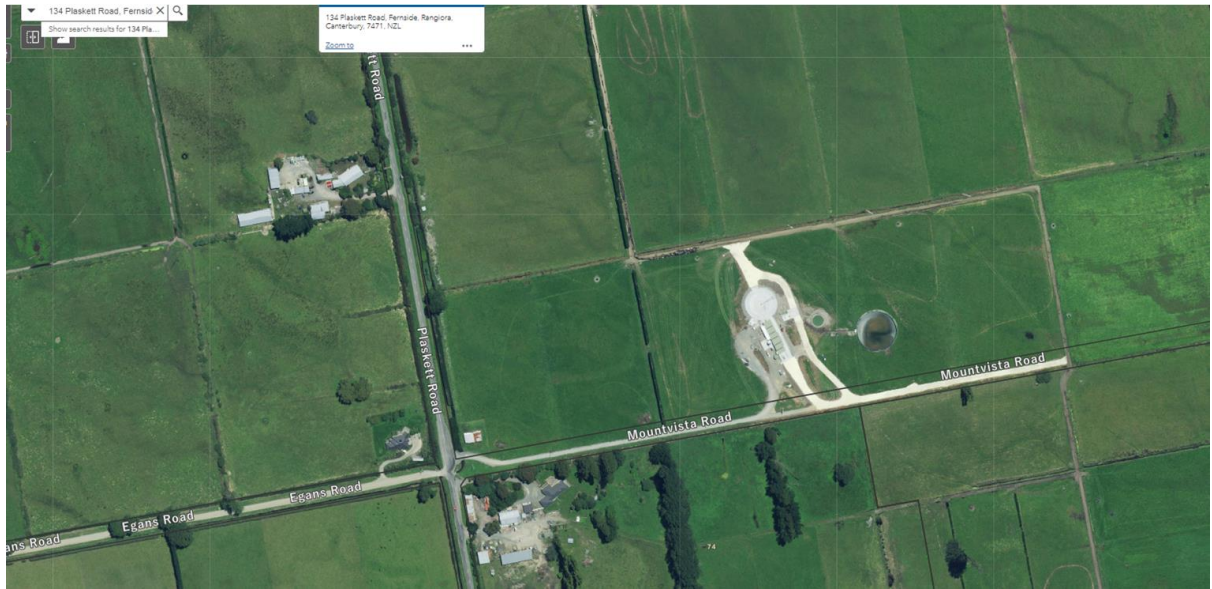
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## Submission on Road Reserve Management Policy-Pineleigh Farm Limited 256 Hicklands Road

### Background:

I David Leslie and Maria Henriette Ashby dairy farmers of Rangiora state:

1. We are dairy farmers at 134/148 Plasketts Road Rangiora.



2. Mountvista(Egans Road) is a paper road that runs through the middle of our property. We have used part of the paper road as the tanker track to our dairy shed . The entry off Plasketts Road is on our own land as there is a power pole and water race preventing access through the paper road.
3. I have concerns regarding the draft policy(6.3.1-6.3.5) We have been here since 1992 and during that time the paper road has been mainly paddock and undeveloped. In recent years a subdivision has been carried out off Easterbrook Road and the name of the road was changed to Mountvista Road and developed to our boundary. As an adjoining landholder we were not consulted.(just like this process) Land use has changed also with the neighbouring 40ha dairy farm now 4ha blocks with houses being built close to our effluent spreading area and shed.
4. We feel that a clause giving long standing farmers some form of existing use right would be appropriate.(or guarantee us a License to Occupy) We milk 600 cows ,contribute to the local economy employ 3 fulltime staff and 2 casuals. and use local contractors. This policy puts our business at risk.
5. Two main issues concern us including:



1 Public access is a license to give the public the back door keys to your business. It promotes crime and is possibly a health and safety issues. Down Hicklands Road we have issues with Boy racers already.

2 A disgruntled neighbour could make it very difficult for us under this draft policy.

6. We wish to be heard in support of our submission.



## Federated Farmers of New Zealand

### Feedback to Waimakariri District Council on: Road Reserve Management Policy

8 September 2023

0800  
327  
646 | **FED  
FARM**  
.ORG.NZ

## FEEDBACK ON: ROAD RESERVE MANAGEMENT POLICY

To: Waimakariri District Council

Name of submitter: North Canterbury Federated Farmers

Contact person: Rachel Thomas  
Senior Policy Advisor - Regional

Address for service: Federated Farmers of New Zealand  
P.O. Box 20448  
Bishopdale  
Christchurch 8543

Phone: 0800 327 646  
Mobile: 021 087 36912  
Email: rthomas@fedfarm.org.nz

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## Introduction

- 1 Federated Farmers thanks Waimakariri District Council for the opportunity to give feedback on the Road Reserve Management Policy.
- 2 Federated Farmers of New Zealand is a voluntary, primary sector organisation that represents farming and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand farmers and their communities.
- 3 Federated Farmers aims to add value to its members' farming businesses by ensuring that New Zealand provides an economic and social environment within which:
  - Our members may operate their businesses in a fair and flexible commercial environment;
  - Our members' families and their staff have access to services essential to the needs of the rural community; and
  - Our members adopt responsible management and environmental practices.
- 4 The economic importance of the agricultural sector to New Zealand's economy is well recognised. Its direct and indirect contribution to New Zealand's economy is about 15%. Land-based primary sector exports comprise over 70% of New Zealand's total exports. Any legislation or regulation which affects farm businesses has the potential to also impact, positively or negatively, on district, regional and national economies and social structure.
- 5 This submission was developed in consultation with the members and policy staff of Federated Farmers. It is important that this submission is not viewed as a single submission, but as a collective one, that represents the opinions and views of our members.

## Road reserve grazing requirements

- 6 The ability to graze road reserves benefits farmers as grazing assists with maintaining overgrowth in these areas.
- 7 The Policy stipulates a period of road reserve grazing to be no more than 14 days at any one time. In the majority of situations, we agree this is appropriate, however there may be situations where grazing includes only a small number of stock. In these cases, grazing may be acceptable for a period of longer than 14 days. For example, a lifestyle block owner with less than ten sheep may be able to graze these sheep for a longer timeframe. Likewise a singular animal, such as a goat, may also be able to graze for longer than 14 days.
- 8 We suggest the Policy is updated to state: *The period of grazing shall be 14 days or less at any one time unless there are ten or less animals grazing.* Alternatively, this statement could be removed in entirety.
- 9 The use of waratahs is not allowed for use in berms under the policy. Waratahs provide a more stable type of fencing than other temporary fences and therefore are more useful to ensure

stock do not get out when grazing the road reserve. However, we do acknowledge a potential safety concern with their use. We suggest the policy is updated to permit waratahs provided they are marked or painted with a bright colour to ensure they are easily visible.

- 10 The Policy requires 'suitable labels' to notify the public of live fences. This is appropriate in areas of high foot traffic (such as urban fringes) but is less relevant in rural areas.

### **New grazing restricted areas**

- 11 We are concerned that the new 'grazing restricted areas' proposed in the policy are overly restrictive. Many farmers benefit from being able to graze stock in the road reserve, and removing this ability may disrupt their farming operations.
- 12 We suggest the Council do not proceed with restricting grazing on any roads until targeted landowner consultation has been carried out. We have been advised that no consultation has taken place in the development of this policy to date.
- 13 From our analysis, we note there are approximately 1,440 rural properties impacted which includes 261 farms larger than 20ha.
- 14 We have included a map (Appendix 1) which shows the extent of the new proposed restrictions. The map shows many areas of the district would be grazing restricted under the new policy. We have included 'floating' properties here which are properties that are not next to an affected road but the owner of which has a property nearby that has been affected. An argument could be made that they are also affected due to stock movement and run-off properties.
- 15 Having discussed our map with a Council officer, there may be some properties included in the map which are excluded from the policy due to these being urban. From our discussions, it is apparent that the policy would benefit from the inclusion of a map to clearly distinguish where grazing is restricted.

### **Unsealed roads**

- 16 Unsealed roads are an issue for many of our members due to dust, mud, run-off and potholes. Council needs to be doing more for rural road users, including sealing and rebuilding the base of over graded roads.
- 17 Three situations are details in the policy where the Council will seal unsealed rural roads: (1) where co-funding by Waka Kotahi is provided, (2) where a 30% financial contribution is provided from an affected subdivision, and (3) when privately funded. These criteria are limiting and do not provide the Council with discretion to elevate priority roads which may result from complaints being received. It is suggested that a fourth criterion is added: *(4) when high traffic volume, dust exposure and/or safety reasons warrant sealing of the road, in the opinion of the Council.*
- 18 The contribution rural ratepayers make to the Council's rating income is significant. Therefore, the cost of sealing rural roads should be at the Council's expense.

- 19 Under the Policy, private funding for seal extension is considered when the adjoining property owner(s) contributes 50% of the cost. However, it would be more appropriate to request 30-40% of the cost of sealing. It is not only the private property owners who benefit from sealing rural public roads. The safety benefits of sealing a road are experienced by all members of the community. Roads are a public good therefore the cost of sealing should fall primarily to the Council.

### **Unformed legal roads**

- 20 The Walking Access Commission<sup>1</sup> states that councils have no express statutory powers to grant a lease or licence over part of a road for private benefit. Yet Council's Policy states: *Approved requests for occupation will be formalised through a Licence to Occupy*. We suggest the Council remove this requirement.
- 21 We are aware that at times our members utilise some or parts of paper roads, i.e. for stock movement. The use of these roads is vital for their business operation, for example when accessing a dairy shed. The process of having to apply for a licence to occupy a paper road is overly onerous. The policy does not detail when a licence to occupy would be granted or withheld and we imagine this will cause a lot of stress for farmers in this situation. There may also be implications for those selling farms whose businesses rely on the use of paper roads. The Council should remove this requirement from the policy.

### **Stock underpass**

- 22 Many farmers have a need to move stock both across roads, and along road corridors. Many farms are now comprised of different holdings, which may be across the road from each other. For example, a farm may consist of paddocks on the opposite side of the road to a milking shed. The ability to freely and safely move stock is therefore important to our members.
- 23 Stock underpasses allow for increased road safety and savings on road maintenance. The Policy delegated discretion for stock underpass approval to the General Manager, Utilities and Roding. We agree with this delegation but request the Policy include a statement: *Approval for a stock underpass will not be unreasonably withheld*.

### **Temporary traffic management**

- 24 While not the likely intention of the Council, we note that the temporary traffic management section (section 10) does not disclose whether a Traffic Management Plan is required for stock movement.
- 25 As per the Council's Stock Movement Bylaw 2020, stock droving is permitted (provided conditions are met). For clarity purposes, we therefore recommend the Policy includes a statement to this effect.

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<sup>1</sup> Walking Access Commission. (2021). Guidelines for the Management of Unformed Legal Roads. Available online: [2021\\_Dec\\_GMULR\\_final\\_Draft\\_rev02\(002\).pdf](#)

**Conclusion**

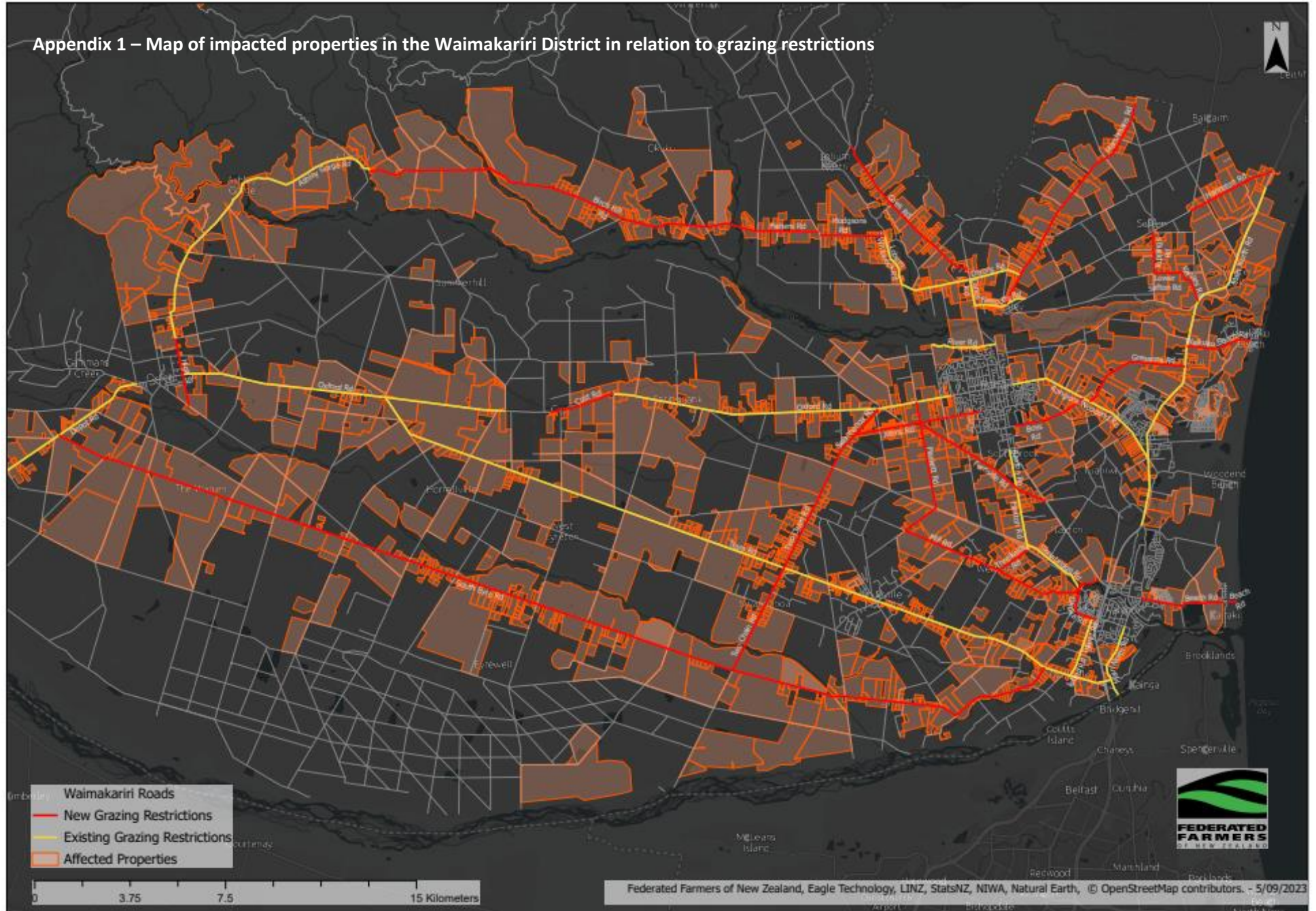
NCFF thanks Waimakariri District Council for the opportunity to present feedback. NCFF wishes to speak in support of its submission.

A handwritten signature in black ink, appearing to read 'Karl Dean', with a long horizontal stroke extending to the right.

Karl Dean  
North Canterbury Provincial President



Appendix 1 – Map of impacted properties in the Waimakariri District in relation to grazing restrictions





# SUBMISSION ON DRAFT ROAD RESERVE MANAGEMENT POLICY

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## **Herenga ā Nuku Aotearoa, the Outdoor Access Commission**

Herenga ā Nuku Aotearoa, the Outdoor Access Commission, is the Crown agent responsible for providing leadership on outdoor access issues. Our role is to advise on — and advocate for — free, certain, enduring, and practical access to the outdoors.

We administer a national strategy on outdoor access, including tracks and trails. We map public outdoor access, provide information to the public, oversee a code of responsible conduct in the outdoors, help resolve access issues and negotiate new access.

Within our work, a large portion of cases we manage relate to the provision, management and use of unformed legal roads as a key public resource providing connectivity for recreation and active transport.

## **Draft Road Reserve Management Policy**

Herenga ā Nuku commends the Council on producing this draft policy and are supportive of Council's intent. We wish to make the following comments, generally with reference to specific sections relevant to public access.

### ***Title of policy***

The title of the draft policy does not adequately reflect the contents of the draft policy.

Road Reserve (also Road Corridor) is defined in the document as land held by the Council or the New Zealand Transport Agency or any other party as road reserve containing a formed road; Berm (also Verge) is defined as grassed, soiled, or metalled area between the carriageway and the property boundary; and Unformed Legal Road (also Paper Road) is land that has been legally established as a public road prior to 1996 but which is not formed or maintained by the Council or the New Zealand Transport Agency as a public road. The draft policy applies to all three of these areas.

We believe that the term 'road reserve', while in common use within councils, is confusing to the general public, and is inaccurate. There is no 'reserve' associated with a road, there is simply a road parcel or corridor. The road corridor may include a formed road, and a berm, and if there is no formed road, it is an unformed legal road.

**Recommendation 1:** That the term 'road corridor' be substituted for the term 'road reserve', throughout the document. The title of the Policy would therefore be "Road Corridor Management Policy".

## **1. Introduction**

An expanded Introduction could clarify what aspects of the road corridor are being considered.

**Recommendation 2:** That the introduction be expanded as follows;

“This policy sets out the Waimakariri District Council’s (the Council) approach to managing activities within the road ~~corridor~~reserve. It addresses uses and management requirements on berms and unformed legal roads~~in the road reserve~~ that can affect private activities or impose costs on residents and provides clear guidance to staff and the community. Public access is a right on all legal roads.”

### 3. Scope

It would be helpful to reference that there is also guidance on the road stopping process.

**Recommendation 3:** That the second bullet point be expanded as follows:

Specifications for the use of unformed legal roads and forming unformed legal roads and the process for stopping unformed legal roads”.

### 4. Policy Objectives

Ensuring the right of public access over unformed legal roads should be affirmed as a policy objective, and can be achieved with an additional point, and using part of the wording from section 6.1.1.

**Recommendation 4:** That a new 4.1 be inserted to read;

“To ensure that the public right of passage along unformed legal road corridors is preserved while protecting the environment, the road and adjoining land, and the safety of road users.”

#### 6.1.1

The Local Government Act 1974 and the Land Transport Act 1998 provide the powers for Council to manage and control roads. Section 357 Local Government Act identifies offences including the general obstructing of public access., and it is an offence under the Summary Offences Act 1981 (s 22) to obstruct a public way. Unfortunately, the responsibility/duty to ensure public access on roads is not clearly prescribed in legislation and relies more on common law and historical precedent. The section could be re-worded to be more technically correct.

**Recommendation 5:** That section 6.1.1 be amended as follows;

“The Council has statutory powers to manage and control roads ~~a responsibility~~ under the Local Government Act 1974 (Part 21) and Land Transport Act 1998 (Part 3), and has a duty to ensure that the public right of passage along unformed legal road corridors is preserved while protecting the environment, the road and adjoining land, and the safety of road users.”

#### 6.1.2

Herenga ā Nuku is pleased to see our Outdoor Access Code being referenced and suggests that the section include a link to a summary of the code.

**Recommendation 6:** That section 6.1.2 includes the following link to a summary of the Outdoor Access Code <https://www.herengaanuku.govt.nz/home/outdoor-access>

#### 6.1.4 -6.1.8

We note that 6.1.3 is superfluous.

Herenga ā Nuku supports sections 6.1.4 to 6.1.8 of the draft policy.

#### 6.2.2

The use of the term ‘plantation forestry’ may be more appropriate than ‘forestry blocks’, as an example of an asset that Council may have purposefully installed in unformed legal roads. As part of the inspection and maintenance of any Council assets, it should be noted that the assets, particularly trees, must not obstruct public access.

**Recommendation 7:** That section 6.2.2 be reworded and expanded as follows;

“The Council is obligated to inspect and maintain non-roading assets that it has purposefully installed in unformed legal roads, such as drainage or plantation forestry ~~blocks~~. These assets must not obstruct public access.”

### 6.3

In relation to private occupation and encroachments on unformed legal roads, Herenga ā Nuku believes it is important to make it clear that any unauthorised occupation or encroachment is illegal, before acknowledging any mitigations.

**Recommendation 7:** That a new 6.3.1 be inserted as follows;

“Any unauthorised encroachment on a road is an offence under Section 357 Local Government Act 1974”

#### 6.3.2

We note Council’s intention to formalise approved encroachments/occupations through Licences to Occupy. The conditions of such licences will be very important, and we have been unable to view Council’s draft Rural Land Lease and Licence Policy. As per Appendix C, it should be made clear that any licence over unformed legal road must not obstruct public access.

We believe that any Licence to Occupy must be for a fixed term and be able to be terminated by Council (see Guidelines for the Management of Unformed Legal Roads section 6.3

<https://www.herengaanuku.govt.nz/assets/Publication/Files/ULR-Guidelinesfor-web.pdf> ).

**Recommendation 9:** That section 6.3.2 be amended as follows;

“Approved requests for occupation will be formalised through a Licence to Occupy and must comply with this policy and the conditions of that Licence to Occupy, including that public access must not be obstructed. See the Council Rural Land Lease and Licence Policy for additional terms.”

**Recommendation 10:** That any Licence to Occupy unformed legal road be for a fixed term and be able to be terminated by Council.

#### 6.3.4

We note that Council “recognises that there are a large number of existing occupied unformed legal roads that are not subject to a formal lease or Licence to Occupy”. Herenga ā Nuku is concerned that there may be occupations of unformed legal roads subject to a lease. There is no express statutory power for councils to grant a lease of a road surface, and any lease over unformed legal road should be exchanged for a Licence to Occupy at the first opportunity.

**Recommendation 11:** That Council does not issue any lease over the surface of an unformed legal road, and that any leases that may already be in place are converted to Licences to Occupy.

#### 6.4.1

As this is the first-time road stopping has been mentioned, a reference to section 6.6 would be helpful.

An additional possible resolution of public access being obstructed may be for the occupant/owner of an encroachment to provide suitable alternative public access e.g., an easement around the obstruction/encroachment, subject to appropriate conditions ensuring public access in perpetuity.

**Recommendation 12:** That the second bullet point references section 6.6 Stopping unformed legal roads e.g.; “Will first attempt to resolve encroachments through voluntary removal, Licence to Occupy, or road stopping (see section 6.6 below){as appropriate,} before considering legal action.”

**Recommendation 13:** That a new third bullet point be inserted, along the lines of;  
Council “May agree to appropriate alternative public access, at no cost to Council, where an encroachment prevents public access”.

### ***6.5. Formation of unformed legal roads***

Section 6.5.2. provides that Council will consider requests from a range of groups, including interest groups to construct cycle tracks, bridle paths, and footpaths within unformed legal roads. Often interest groups require minimum change to the surface of an unformed legal road to enable their proposed activity. In some areas, simple requests to clear vegetation to facilitate walking on an unformed legal road have effectively been stymied by what might be seen as excessive bureaucracy. It would be helpful to indicate Council’s approach when considering such applications.

**Recommendation 14:** That a new section be inserted after 6.5.3, along the lines of;  
“When considering applications to facilitate use of unformed legal roads by walkers, cyclists or horse riders, Council will take into account the proposed extent of modification to the surface of the unformed legal road and seek to enable such use wherever possible.”

### ***6.5.2***

The section provides that Council will consider requests from developers, and others. We believe the term “where this is vital for development” is too subjective, and unnecessarily offers a potential to encourage developers to incorporate unformed legal roads into a development.

**Recommendation 15:** That the words “where this is vital for development or” be deleted.

### ***6.6.1***

Herenga ā Nuku fully endorses Council following the Local Government Act 1974 section 342 process where a road is proposed to be stopped.

We note that section 116 of the Public Works Act 1981 does not provide a statutory power or authority for Council to initiate and stop an unformed legal road at the request of and solely for the convenience of any private person. It may be appropriate for the Minister of Lands to stop a road under the Public Works Act where doing so is deemed to be in the public’s interest.

The perception that there is no likelihood of a valid objection to a proposed road stopping is NOT a valid reason for the Public Woks Act to be used to stop a road. This suggestion should be removed from the section.

**Recommendation 16:** That the words “there is no likelihood of a valid objection being received and” be deleted, as they are not appropriate to the use of section 116 of the Public Works Act 1981.

### ***6.6. Stopping unformed legal roads***

Herenga ā Nuku has extensive experience in the management of unformed legal roads, including road stopping applications. To avoid unnecessary time and/or costs for an applicant when a road stopping application is made, we already assist several councils by considering the present and potential recreational use of the road. This can be by working with a potential applicant before an application is made or working with the council in considering an application as early in the process as possible. Councils often find value in having an independent third party assess what are sometimes contentious issues. Herenga ā Nuku would be happy to assist Council when considering road stopping applications.

**Recommendation 17:** That Council work with Herenga ā Nuku when considering applications to stop unformed legal roads.

### 7.1.3

Herenga ā Nuku supports any boundary fencing being on the legal boundary line. We accept that there may be cases where existing fences not on the boundary may be acceptable to Council, subject to the proviso that public access is not obstructed.

**Recommendation 18:** That section 7.1.3 is expanded by adding “.. providing that public access is not obstructed.”

### 7.5.4.4

It is important that public access on berms, for example for pedestrians or with horses, is not obstructed. It would be helpful for this to be specifically noted as an example of when plantings may be considered a nuisance.

**Recommendation 19:** That the first sentence in section 7.5.1.4 be amended to read “Plantings will be considered a nuisance by Council if they create a safety risk or interfere with road maintenance, drainage, ~~or~~ utility services or public access.”

### 7.5.6.3

The evaluation of significant or notable vegetation on a proposed new road is for possible retention by the Council as street trees. An additional bullet point may be warranted to ensure that some wider factors are considered.

**Recommendation 20:** That an additional bullet point be included;  
“Public access, community connectivity and active transport”

---

### 9.2.1

Section 344 Local Government Act 1974 provides that the Council may permit the erection of a suitable swing gate, or cattle stop, across any road. It also provides for fencing across the road up to that swing gate or cattle stop. Section 357 identifies offences associated with damage/obstruction of roads where the activity has not been authorised but does not actually provide for the erection of a gate across a road.

We believe that emphasis should be placed on permission to erect a swing gate or cattle stop and associated fencing, rather than fencing across the road, and that reference to section 357 should be removed.

**Recommendation 21:** That the section be amended along the lines of;  
“With approval from the Council, a person may erect a ~~swing fence with a suitable~~ gate or cattle stop, and associated fencing, across an unformed legal road in accordance with s 344 ~~or 357~~ of the Local Government Act 1974. A sign must be affixed to the gate indicating it is a public road.”

### ***Definitions - Road Reserve (also Road Corridor)***

As identified under “Title of Policy” above, Herenga ā Nuku believes that use of the term ‘road reserve’ is confusing, and factually inaccurate. ‘Road corridor’ may be less confusing, although technically ‘road parcel’ would be more accurate.

**Recommendation 22:** That Council use the term ‘road corridor’ and not ‘road reserve’.

### ***Definitions – Unformed Legal Road (also Paper Road)***

Herenga ā Nuku accepts that the term ‘paper road’ has been commonly used when referring to unformed legal roads. We discourage use of the term as it implies that unformed legal roads are somehow less relevant/more ephemeral than formed roads. The public access rights are the same on any legal road, formed or unformed.

Unformed legal roads are not confined to being created prior to 1996. Councils can still effectively create an unformed legal road, for example where there is an effective land swap with an existing unformed legal road being stopped and an alternative road (unformed) created. Herenga ā Nuku is aware of at least two examples in the Canterbury region.

**Recommendation 23:** That the definition be amended to read;

“Unformed Legal Road (~~sometimes referred to as~~ also Paper Road) – land that has been legally established as a legal public road ~~prior to 1996~~ but which is not formed or maintained by the Council or the New Zealand Transport Agency ~~as a public road~~”

### ***Relevant documents and legislation***

With reference to the Local Government Act 1974, Part 21 is much wider than managing unformed legal roads and may better be noted as ‘management of roads’ The draft policy has specifically referred to other sections of the Act, and these should be cited as well.

**Recommendation 24:** That under the Local Government Act 1974, the note to Part 21 be (managing ~~unformed~~ roads), and that s.344 (gates and cattle stops) and s357 (penalties for damage to roads) be added to the bullet points.

**Recommendation 25:** That “Guidelines for the Management of Unformed Legal Roads” (Herenga ā Nuku Aotearoa) be cited as a relevant document.

### ***Appendix C: Technical requirements - Unformed Legal Road Occupation Requirements***

Herenga ā Nuku is pleased to see that unobstructed public access is clearly identified as a requirement for any request to occupy an unformed legal road. It is important to note that such public access may include with motorised vehicles, bicycles and horses, and these examples should be included for completeness. Sometimes public access on unformed legal roads is taken as being limited to walking access. The access should also be practical and along ‘desire-lines’.

**Recommendation 26:** That the first bullet point be expanded to read;

“Public access along the road must not be obstructed, and such access may include with motorised vehicles, bicycles and horses. A minimum traversable width of 4m must always be maintained ~~at all times and the access must be as practical and desirable for the user as possible.~~”

### ***Appendix C: Technical requirements – Road Reserve Corridor Grazing Requirements***

The grazing of road frontages can be mutually beneficial for the adjoining landholder and the Council. While the road is assumed to be unobstructed, access for other users on the frontage/berm, particularly horse riders, should also be considered.

**Recommendation 27:** That an additional bullet point be included, along the lines of;

“Where public access on the frontage/berm is expected and/or warranted, it shall be provided for.”

## **Conclusion**

Herenga ā Nuku again commends the Council on producing this draft policy. We believe it is a significant step particularly in relation to ensuring public access on unformed legal roads and clarifying the possible use of berms and unformed legal roads. While the legal and technical aspects can be complex, it is important that they are accurately and clearly reflected.

Herenga ā Nuku appreciates being able to make this submission and believes that acceptance of the recommendations would enhance the draft policy.

We welcome further engagement with Council on this draft policy, and any other public access matter.

**Geoff Holgate**

Kaitohutohu ā-Rohe - Regional Field Advisor

Herenga ā Nuku Aotearoa Outdoor Access Commission

## Council should have berm maintenance policy

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Local authority
<b>Ombudsman</b>	John Robertson
<b>Case number(s)</b>	W28151
<b>Date</b>	1992

---

### *Maintenance of berms—Council should have consistent policy*

The complainant, an elderly widow, approached the Council several times without result for assistance maintaining the berm outside her property. She was paying \$20 per fortnight to a private contractor to undertake the work and she submitted that it was unreasonable to expect her to spend this amount maintaining Council property.

The Council advised the Ombudsman that it did not have a berm maintenance policy with universal application throughout the city. However Council officers were sympathetic to the complainant's concerns, and undertook to put the issue before the appropriate Council Committee.

The Committee considered the matter at two meetings, and the complainant and other members of the public were permitted to speak. It then formulated a policy which recognised that most residents voluntarily mowed their berm areas within the road reserve. However the Committee resolved that where residents were unwilling or unable to mow the berm areas the Council would undertake the mowing on the basis of up to four rough cuts a year, so that the berm would not become a hazard to traffic or pedestrian movement. It also decided to monitor and review the operation of the policy to determine whether there might be some requirement to make provision for special cases. It seemed that this policy was a reasonable one, as well as being very similar to the practice the Ombudsman understood had been adopted by most local authorities. Accordingly the complainant was advised that the Ombudsman's enquiries had led to the development of a policy which should help alleviate her difficulties and the investigation was discontinued.



*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*

# Guidelines for the Management of Unformed Legal Roads



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ISBN 978-0-473-65617-1 (print)

ISBN 978-0-473-65619-5 (PDF)

ISBN 978-0-473-65618-8 (ePub)

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**Te Kāwanatanga  
o Aotearoa**  
New Zealand Government



# Forward

The *Guidelines for the Management of Unformed Legal Roads* was first published in 2011 by Herenga ā Nuku (the New Zealand Walking Access Commission at that time) as a practical way of bringing the law into focus for the range of people who deal with unformed legal roads.

The first edition proved to be a valuable resource for both administrators tasked with addressing issues concerning unformed legal roads and their general management, and also for those members of our communities who are interested in establishing or protecting public access.

This new edition has been informed by the many issues that Herenga ā Nuku and local authorities have faced over the past 11 years. And, like its predecessor, it is informed by the seminal research undertaken by the former Registrar-General of Lands, Brian Hayes, including *Water Margins and Riverbeds: the law on public access*.

The role of unformed legal roads, as part of New Zealand's "recreational highways" (a term coined by Brian Hayes) holds even greater relevance today than it did when the first edition was published, as public access for outdoor recreation and active transport is increasingly important.

It is therefore important that councils, which hold roads in fee simple in trust on behalf of the public, have access to the best practice material available for administering unformed legal roads.

This new edition of the Guidelines, developed with input from councils, will continue to enhance the working partnerships between councils and Herenga ā Nuku and will help standardise administrative processes to reduce impediments that might otherwise hinder public access over unformed legal roads.



Ric Cullinane  
Tumuaki | Chief Executive  
Herenga ā Nuku Aotearoa



Susan Freeman-Greene  
Chief Executive  
Local Government New Zealand



**Herenga  
ā Nuku**  
AOTEAROA



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# 1. Introduction

Enjoying free and enduring access to New Zealand's unique and spectacular outdoors is part of our culture and identity. A rich recreational heritage, enabled by access to rivers, lakes, beaches, and alpine areas, has contributed significantly to our health and wellbeing – as well as enhancing our awareness of our natural environment. Unformed legal roads provide significant public access routes to the outdoors.

However, changing attitudes, more intensive land use and increasing private development in rural areas can compromise access opportunities. Further, public access to some recreational areas is not always clear and understood which, for a few, can cause unnecessary conflict – especially when access previously available is stopped.

The Walking Access Act 2008 established Herenga ā Nuku to provide, among other functions, national leadership on walking access at a strategic level and also local and regional leadership on walking access in collaboration with local authorities.

Herenga ā Nuku has developed a strong reputation for facilitating public access dispute resolution – often related to unformed legal roads.

The resources that Herenga ā Nuku has developed include its highly valued mapping system, information about land over which there is public access and guidelines – including *Guidelines for the Management of Unformed Legal Roads*, published in February 2011.

This 2nd edition of the Guidelines is a revised and updated resource providing an overview of unformed legal roads from both common law and legislation perspectives and includes administration guidance. This resource is designed to facilitate a greater understanding of unformed legal roads and to improve standardisation and consistency in their administration and issues resolution.



Stock grazing sign at the start of a fenced in unformed legal road – Kurow River, 2013

## 2. Background

Herenga ā Nuku developed its mapping system in 2010 – one of the first national digital mapping and information systems in New Zealand. Using the Herenga ā Nuku current digital maps,<sup>1</sup> and assisted by smart technology, users may now more readily identify public access including the general locality of unformed legal roads.<sup>2</sup> Herenga ā Nuku's mapping system helped enhance people's understanding of the extent of New Zealand's unformed legal road network and the public access opportunities that network provides.

Herenga ā Nuku published the first edition of *Guidelines for the Management of Unformed Legal Roads* in 2011 to facilitate a greater awareness of unformed legal roads by both road users and administrators.

This 2022 revised and updated edition has been informed by a decade of issues and questions fielded by Herenga ā Nuku and local authorities – broadly summarised as:

- concerns over unformed legal roads being publicly identified in mapping systems

- disputes over the legal status and location of unformed roads
- obstructions preventing public access along unformed legal roads
- responsibility for maintaining and controlling unformed legal roads and council's liabilities, and
- issues around consistency – standardising administration of unformed legal roads including road stopping.

For any reader wishing to delve deeper into the background and law relating to public access and unformed legal roads, the following authoritative publication is available on the Herenga ā Nuku website:

B.E. Hayes Road, *Water Margins and Riverbeds: The Law on Public Access* (2008).

For readers wishing to reference related court case decisions, many are available at: [www.nzlii.org/databases.html](http://www.nzlii.org/databases.html)

## 3. Disclaimer

Every effort has been made to ensure that this publication is accurate and current at date of publication. However, this guideline is not a substitute for legislation or council policy and bylaws. The courts remain the final arbiter.

<sup>1</sup> <https://herengaanuku.govt.nz/maps>

<sup>2</sup> Appendix A identifies navigation challenges arising from varying positional accuracies of unformed roads as spatially represented in geographic information systems.



## 4. Unformed legal roads – a legacy and a taonga

Unformed legal roads are an infrastructural legacy from early New Zealand development. They resulted from necessity, as reflected by Justice Williams when he said:

In nearly every case where land is Crown granted, and described as bounded by a road, the road at the time when the land was granted was not made.<sup>3</sup>

Many of these unformed roads were established in the period of provincial government, 1854 to 1876, with the majority in place by 1905.<sup>4</sup> In managing the demand for land during this early settlement period, not only were most rural roads not constructed at the time the adjoining land was granted, but many roads were only identified in the (paper) survey records – hence the colloquial name ‘paper roads’.<sup>5</sup> Some such roads have subsequently been found to follow totally impractical

alignments as they were included on maps with little or no supporting field reconnaissance.

Over one and a half centuries later, an estimated 56,000 kilometres of legal road remain unformed with the majority of them in rural areas.<sup>6</sup> Most of these roads remain unfenced (or fenced on one and sometimes two sides if abutting separate titles) and are generally indistinguishable from the adjacent rural land.

While they are a legacy from the past, these unformed roads are increasingly valued for their recreational opportunities. These include new horse and cycle trails as well as additional public access routes to the conservation estate, rivers, lakes and the coast. Unformed legal roads are a taonga, and the national and regional economic development opportunities they provide cannot be overstated.

<sup>3</sup> ..... *Mueller v Taupiri Coal Mines Ltd* (1900) 20 NZLR 89, (1901) 3 GLR 138 (CA) at 147 per Williams J.

<sup>4</sup> Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access* at page 49.

<sup>5</sup> In this context their existence is only identifiable on ‘paper’ plans and maps. Unless quoting from a court case, the term ‘unformed road’ or ‘unformed legal road’ is used in this document.

<sup>6</sup> Ministry of Agriculture and Forestry (2007). Internal paper.





# 5. The law and unformed legal roads

The law relating to highways (roads) is embodied in centuries of common law inherited from England. Since 1876, this has been included in New Zealand statutory law. Yet, as Lord Briggs noted recently in *London Borough of Southwark and another v Transport for London*:

The word highway has no single meaning in the law but in non-technical language it is a way over which the public have rights of passage, whether on foot, on horseback or in (or on) vehicles.<sup>7</sup>

## 5.1 Public highways at common law

Halsbury's Laws of England describes a highway at common law as:

...a way over which all members of the public are entitled to pass and repass; and, conversely, every piece of land which is subject to such public right of passage is a highway or part of a highway.<sup>8</sup>

...The common law maxim or rule is "once a highway always a highway." The public cannot release rights once acquired by them, no authority can bind them in purporting to release such rights, and there is no extinctive presumption or prescription arising from non-exercise thereof.<sup>9</sup>

Under common law, a way (public right of way, highway, or road) may be established through express or implied dedication (offer and acceptance of a public right of way). The offer may be made by the Crown<sup>10</sup> or by other rightful owners of the land. This common law process to dedicate roads is still good law that continues to be used in New Zealand – the *Man O' War Station Ltd v Auckland City Council* decision being a recent example.<sup>11</sup>

However, New Zealand Statutes that define what is a road<sup>12</sup> rebut the common law presumption that the

owner of land adjoining a highway is the owner also of the soil of one half of the highway.<sup>13</sup>

Legal roads established by express or implied dedication under common law will need to have been marked on record maps and captured into the cadastre, or shown on approved survey plans if they are to be identified in the official digital cadastral record. Roads need to be identified in the digital cadastral record to enable importing to generic mapping systems such as those of Herenga ā Nuku and local authorities.

## 5.2 Meaning of 'road' is set out in two key statutes

In addition to the common law meaning of a public highway, two principal statutes – the Local Government Act 1974 and the Government Rounding Powers Act 1989 expand on the meaning of a legal road.

### 5.2.1 Meaning of road as defined in the Local Government Act 1974

The statutory authority for the control and management of legal roads vested in local authorities is the Local Government Act 1974, which states in the interpretation section 315(1):

**road** means the whole of any land which is within a district, and which –

- (a) immediately before the commencement of this Part was a road or street or public highway; or
- (b) immediately before the inclusion of any area in the district was a public highway within that area; or
- (c) is laid out by the council as a road or street after the commencement of this Part; or

<sup>7</sup> *London Borough of Southwark and another v Transport for London* [2018] UKSC 63, per Lord Briggs SCJ at 6.

<sup>8</sup> Halsbury's Laws of England (1911) vol 16, Highways Streets and Bridges, at [1].

<sup>9</sup> Ibid at [103].

<sup>10</sup> Ibid at [46].

<sup>11</sup> *Man O' War Station Ltd v Auckland City Council* (2002) 2 NZLR 267.

<sup>12</sup> s80 Public Works Act 1876 and subsequent acts include the soil under a road in the definition of a road.

<sup>13</sup> Halsbury's Laws of England (1911) vol 16, Highways Streets and Bridges, [71].

- (d) is vested in the council for the purpose of a road as shown on a deposited survey plan; or
- (e) is vested in the council as a road or street pursuant to any other enactment;—<sup>14</sup>

Section 315 also addresses status of accretion and erosion to road.

Section 315(4) states:

Every accretion to any road along the bank of a river or stream or along the mean high-water mark of the sea or along the margin of any lake caused by the action of the river or stream or of the sea or lake shall form part of the road.

Section 315(5) states:

Where any road along the bank of a river or stream or along the mean high-water mark of the sea or along the margin of any lake is eroded by the action of the river or stream or of the sea or lake, the portion of road so eroded shall continue to be a road.

### 5.2.2 Meaning of road clarified by the Government Roothing Powers Act 1989

The interpretation of 'road' is made clearer, particularly in the context of unformed legal roads, by the Government Roothing Powers Act 1989 which, in section 43(1), states:

**road** means a public highway, whether carriageway, bridle path, or footpath; and includes the soil of —

- (a) Crown land over which a road is laid out and marked on the record maps:
- (b) land over which right of way has in any manner been granted or dedicated to the public by any person entitled to make such grant or dedication:
- © land taken for road under the provisions of this Act, the Public Works Act 1981, or any other Act or Provincial Ordinance formerly in force:
- (d) land over which a road has been or is in use by the public which has been formed or

improved out of the public funds, or out of the funds of any former province, or out of the ordinary funds of any local authority, for the width formed, used, agreed upon, or fenced, and a sufficient plan of which, approved by the Chief Surveyor of the land district in which such road is situated, has been or is hereafter registered by the District Land Registrar against the properties affected by it; and the Registrar is hereby authorised and required to register any such plans accordingly, anything in any other Act notwithstanding, when the plans are presented for registration by or on behalf of the Minister:

- (e) land over which any road, notwithstanding any legal or technical informality in its taking or construction, has been taken, constructed, or used under the authority of the Government of any former province, or of any local authority, and a sufficient plan of which is registered in the manner provided for in paragraph (d), —

and, unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon the line and within the limits of the road.

Section 43(1) Government Roothing Powers Act 1989 also states:

**stopping**, in relation to a road, includes diverting.

### 5.2.3 Historical statutes defining road

The first national statute applying to the control and management of roads was the Public Works Act 1876 which defined a road under section 79 as:

The word "road" means a public highway, whether carriage way, bridle path, or footpath, and includes the soil of —

<sup>14</sup> Refer to section 315 of the Local Government Act 1974 for the full list of sub-clauses relating to the interpretation of "road".

- (1) waste lands of the Crown over which a road is laid out and marked on the survey maps
- (2) lands over which right of way is granted to the public by deed by any person entitled to make such grant;
- (3) lands taken for roads under the provisions of this or any other Act or Ordinance;

and includes also all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon the line and within the limits of the road.

This initial statutory definition of road was enhanced by the Public Works Act 1882 which added a catch-all provision which is shown in bold below. Under section 78 the expanded definition of “road” became:

Throughout this Act, the word “road” means a public highway, whether carriage-way, bridle-path, or footpath, and includes the soil of—

- (1) Crown lands over which a road is laid out and marked on the survey maps;
- (2) Lands over which right of way has in any manner been granted or dedicated to the public by any person entitled to make such grant or dedication;
- (3) Lands taken for roads under the provisions of this Act or any other Act or Ordinance:

**and, unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed; or declared roads under any law or authority for the time being in force,** and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon the line and within the limits of the road.

This enhanced definition continued unchanged (but with additional subsections) in the subsequent Public Work Acts and is now contained in the current Government Roading Powers Act 1989, as set out above under [5.2.2](#).

### 5.3 Public areas referred to as road in legislation are not always legal road

The following statutes refer to roads — but only for the purpose and in the context of that specific legislation. Some are not legal roads in terms of being a public highway, or road as referred to in the Local Government

Act 1974 and the Government Roading Powers Act 1989.

#### 5.3.1 Land Transport Act 1998

Section 2 – Interpretation

(1) In this Act, unless the context otherwise requires,—...

**road** includes—

(a) street; and (b) a motorway; and (c) a beach; and (d) a place to which the public have access, whether as of right or not; and (e) all bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in paragraph (d); and (f) all sites at which vehicles may be weighed for the purposes of this Act or any other enactment

Refer to section [5.7](#) for contextual use in this guideline.

#### 5.3.2 Impounding Act 1955

Section 2 – Interpretation

(1) In this Act, unless the context otherwise requires,—...

**road**—

(a) means any place open to or used by the public as of right; and (b) includes a river bed and riparian land under the control of any local authority or regional council, unless any occupier of land adjoining the river bed or riparian land is also the lawful occupier of that river bed or riparian land

Refer to section [6.3.3](#) for contextual use in this guideline.

### 5.4 Councils hold title to roads – in trust for the public

Initially all roads were vested in the Crown under the Public Works Act 1876. In 1973, the ownership of county roads (and therefore most unformed legal roads) transferred to the then county councils.<sup>15</sup>

Since 1979, by force of section 316 of the Local Government Act 1974, all roads (other than government roads or state highways) and the soil under the roads and the materials laid on any road now vest in fee simple in the relevant council.

<sup>15</sup> Counties Act 1956, section 191A as inserted by s2 of the Counties Amendment Act 1972.

The context of this vesting in trust on behalf of the public is clarified in *Man O' War Station Ltd v Auckland City Council* in which Blanchard J states:

...Despite the vesting in the local authority the right of passage over a road is one possessed by the public, not the local authority, which holds its title and exercises its powers in relation to a road as upon a trust for a public purpose...<sup>16</sup>

This puts the onus on councils to ensure, among other things, that the rights of public access along unformed legal roads are protected in perpetuity from obstruction or other nuisance<sup>17</sup>.

#### 5.4.1 No rights of ownership to unformed legal road through occupation

Many unformed legal roads appear to be incorporated into adjoining farms and forests.

But adjoining landholders have no rights of occupation or ownership of unformed legal roads, irrespective of how many years they have been utilising the land as their own. The right of the general public to pass and repass over any road is held in perpetuity.

Legislation (Land Act 1948 and Land Transfer Act 2017) prevents claims of adverse possession of a road, Crown land or other land vested in trust for public use.<sup>18</sup>

Further, a person may not acquire title to a public road if the road has been included in a record of title unlawfully or acquired under an unauthorised instrument. The legal road remains in existence.<sup>19</sup>

#### 5.4.2 The Crown holds residual rights in roads in certain circumstances

Notwithstanding the Crown, in 1979, vesting roads in fee simple in councils, the Crown retains some residual rights and control as noted in the following section and also under [Section 7](#).

### 5.5 Statutes refer to unformed roads

There is no statutory definition for an unformed legal road but they are referred to in legislation.

Section 2 of the Local Government Act 1974 does provide a definition of formation:

**“Formation**, in relation to any road, has the same meaning as the construction of the road, and includes gravelling, metalling, sealing, or permanently surfacing the road...”

Therefore an unformed road may be taken to be a road that has not been constructed or improved by the council by adding metal, seal or any other type of surface.

While the law relating to the use of roads does not differentiate between formed and unformed roads the Local Government Act 1974, Land Act 1948 and Land Transport Act 1998 provide for specific administrative actions relating to unformed roads:

- the Crown may resume certain unformed roads <sup>20</sup>
- unformed roads and unused roads intersecting or adjoining certain Crown land may be closed (in this context meaning stopped) and declared Crown land<sup>21</sup>
- road controlling authorities have the power to make bylaws that restrict the use of vehicles on unformed roads to protect the environment, the road, adjoining land or for the safety of road users.<sup>22</sup>

### 5.6 Courts recognise unformed roads as public highways vested in councils

Concerns, issues and disputes, including the origin and proof of undefined and unformed roads being public highways, have arisen since colonisation.

This has resulted in a body of case law confirming unformed roads are legal with the same status as formed roads. Further, courts have confirmed that unformed roads are legal notwithstanding they may not have been marked out on the ground. A leading case often referred to, which went up to the Privy Council, is *Snushall v Kaikoura County*.<sup>23</sup>

<sup>16</sup> *Man O' War Station Ltd v Auckland City Council* (2002) 2 NZLR 267, 22.

<sup>17</sup> Halsbury's *Laws of England* (1911) vol 16, Highways Streets and Bridges, at [265] states that it is a nuisance at common law either to neglect any legal duty in respect of a highway, or to hinder or prevent the public from passing freely, safely and conveniently along it...

<sup>18</sup> Land Act 1948 section 172(2) – No title by user or adverse possession.

<sup>19</sup> Land Transfer Act 2017 section 53 – No title to public road or reserve unless authorised.

<sup>20</sup> Local Government Act 1974. Section 323(1)&(2).

<sup>21</sup> Land Act 1948. Section 43 (1).

<sup>22</sup> Land Transport Act 1998. Section 22AB (1)(g).

<sup>23</sup> *Snushall v Kaikoura County* (1923) NZPCC 670.



Referring to the Snushall case, in *Tauranga City Council v Faulkner*, Whata J said

....section 78 (Public Works Act 1882) states “throughout the Act road means a public highway”, and includes “Crown Land over which a road is laid out.” Tautology aside, it is obviously a deeming provision, intended to encompass all roads laid out on Crown land so as to bring them within the public works umbrella. It was not necessary for them to be expressly set aside for, or in, public use, or even physically laid out at the time. That has been the settled position since decision of the Court of Appeal in *Kaikoura County v Snushall*.<sup>24</sup>

... The effect of this is that the strip was treated in fact as a public road, as shown on subsequent survey plans, and subject to the Public Works Act 1882 with the result that it was deemed to be a public highway. Subsequent legislation, culminating in the Local Government Act 1974, meant that the strip was vested as a paper road in the Council.<sup>25</sup>

## 5.7 Statutory authority for controlling road users

The principal statute for controlling road users (as distinct from administering and maintaining roads) is the Land Transport Act 1998 which sets out the relevant law and provision for regulations and rules governing road user behaviour.

It defines, for the purposes of enforcing traffic rules, a wider definition of ‘road’ over which the public may have access (such as carparks and beaches) but which are not ‘public highways’ as defined under the Local Government Act 1974.


It also authorises councils to make specific bylaws prohibiting or restricting the use of vehicles on beaches<sup>26</sup> and restricting the use of motor vehicles on unformed legal roads – to protect the environment, the road and adjoining land, and the safety of road users.<sup>27</sup>

<sup>24</sup> *Tauranga City Council v Faulkner* [2016] NZHC, 45.

<sup>25</sup> *Ibid*, 50.

<sup>26</sup> Land Transport Act 1998 section 22AB (1) (f).

<sup>27</sup> Land Transport Act 1998 section 22AB (1) (g).



An unformed legal road near Hurunui, North Canterbury. Photo credit: Mary-Anne Baxter.

# 6. General powers of councils in respect of roads

The Local Government Act 2002 sets out, among other things, a council's purpose and powers of general competence and includes powers for making bylaws. Councils must meet current and future needs of communities for good quality local, network and community infrastructure – appropriate to present and anticipated future circumstances.<sup>28</sup> Infrastructure includes existing unformed legal roads which can provide current and future recreational opportunities – contributing to the health and wellbeing outcomes of local communities.

Councils' general powers in respect of roads are set out under section 319 of the Local Government Act 1974. These powers include construction, maintenance and repair of roads. Councils' powers also extend to stopping or temporarily closing a road, in the manner and upon the conditions set out in section 342 and Schedule 10.

Except for permitting utilities or granting a lease of airspace or subsoil, as discussed under section 6.2, there is no express statutory power for a council to lease part of a road surface for private benefit. However, as discussed under section 6.3, there is an inferred and general authority for a council to permit temporary occupation or encroachment of part of a road – providing such occupation or encroachment does not interfere with the public's right to pass and repass along the road or create some other nuisance.

## 6.1 Councils may restrict access on a road

In their proper control and administration of roads a council may, in certain circumstances, restrict public access along a road. Such restrictions, which may only be initiated under specific statutory powers, include:

- determining, under section 319(1)(f) Local Government Act 1974, what part of a road shall be a carriageway, and what part a footpath or cycle track only;

- temporarily closing a road, under section 342(1)(b) of the Local Government Act 1974; and
- restricting use of motor vehicles on unformed legal roads under a bylaw authorised by section 22AB(1)(g) of the Land Transport Act 1998.

## 6.2 No express statutory power for councils to grant lease of road

Apart from the following instances, a council has no express statutory powers to grant a lease or licence over part of a road for private benefit.

Section 341 of the Local Government Act 1974 provides explicit statutory powers to grant a lease of airspace or subsoil of a road. But that is subject to the council ensuring sufficient airspace above the surface of the road for the free and unobstructed passage of vehicles and pedestrians lawfully using the road.

Under section 338, a council may grant an easement or other right for the laying of conduit pipes along or under a road. Such agreements may only be for periods not exceeding 50 years.

The Tramways Act 1908 provided express powers authorising councils to grant licences for private tramways on roads. This Act was repealed in 1992.<sup>29</sup>

Section 340 of the Local Government Act 1974 authorises a council to issue a permit to erect a private motor garage between the building line and the road line, but this is adjacent to, not over a legal road. Notwithstanding, some councils provide in their by-laws that parking pads, for example, may encroach onto a legal road.

The clear absence of a council's express statutory authority to lease an unformed legal road can be compared with the following express authority the Crown holds to lease unformed highway.

<sup>28</sup> Local Government Act 2002 sections 5 and 10.

<sup>29</sup> The Tramways Act 1908 was repealed by the Railway Safety and Corridor Management Act 1992.

### 6.2.1 Crown may lease unformed State highways – but road status suspended

Under the heading of State highways, section 61A of the Government Roding Powers Act 1989, (previously section 45(2) Public Works Act 1981) provides for the leasing of part or all of any Government road or State highway while it is unformed. While leased (until needed for construction of State highway, for example) the status of the land as a road or highway is suspended.

Given this specific wording and also the principles set out in the Interpretation Act 1999, it is clear that this unformed road leasing provision may only apply to State highways<sup>30</sup> and Government roads, not unformed legal roads vested in councils.

### 6.3 Councils' general authority to permit occupation of part of a road

Notwithstanding that there is no express statutory power for councils to grant a lease of a road surface, the Local Government Act 1974 section 341(3), in providing for leases of airspace or subsoil of roads, confirms that:

Nothing in this section shall be construed so as to restrict any right a council may have to permit any person to use for a temporary period any part of the surface or of the airspace above the surface of any road.

In addition to section 341(3), a general authority to authorise encroachments may also be inferred from section 357(1)(a) which states:

Every person commits an offence who, not being authorised by the council or by or under any Act, encroaches on a road by making or erecting any building, fence, ditch, or other obstacle or work of any kind upon, over, or under the road, or by planting any tree or shrub thereon...

Also, as seen in the following two decisions, the courts confirm that as the owner of the fee simple of legal roads councils do have a general authority to authorise occupation of part of a road. But that authority does

not extend to cause interference with the public's right to pass and repass or to cause a public nuisance.

Denniston J stated:

I know of nothing to prevent a Corporation allowing the exclusive occupation of a part of its streets to a particular person or persons so long as such occupation does not constitute a nuisance to the general public.<sup>31</sup>

Cooper J stated:

...the Borough Corporation had no express power to consent...but that as owner of the fee simple ... it had the general authority to allow W.S. and Co. to occupy a portion of Tweed Street, with this limitation, that the occupation permitted must not amount to a nuisance, or interfere with individual rights...<sup>32</sup>

Applications for road encroachments, such as for electric vehicle charging stations, tourist operator utilities and car parking pads, will principally relate to formed roads in urban areas.

Most encroachments over rural unformed legal roads are farm buildings, fences, ditches and irrigation channels.

Many of the encroachments over unformed legal roads may require retrospective approvals as they are only recently being identified through overlaying modern imagery with the digital cadastral road parcel record in councils' geographic information systems.

Comprehensive policies enable councils to address applications for road encroachments in a consistent and transparent manner.<sup>33</sup>

To address exceptional situations, section 80 of the Local Government Act 2002 provides for decisions to be made that are inconsistent with council policy – provided that the inconsistency, reason and intention is clearly identified.

Authorised encroachments or occupation of part of a road must be for a fixed term and able to be terminated by the council, with conditions to ensue protection of the general public's right to pass and repass along the road without the encroachment causing a nuisance.

<sup>30</sup> Interpretation Act 1999 Section (2): The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment. Section (3): Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

<sup>31</sup> *The Mayor of Christchurch v Shah* SC Christchurch (1902) 21 NZLR 578.

<sup>32</sup> *Mayor, Councillors, and Burgesses of Borough of Invercargill and Wright, Stephenson, & Co v Hazlemore* SC Invercargill (1905) 8 GLR 252 (25 September 1905).

<sup>33</sup> Wellington City Council's Consolidated Bylaw 2008 and Christchurch City Council's Structures on Roads Policy 2020, for example, provide for road encroachments.



Historic structures encroaching a legal road may still leave sufficient space to allow practical public access, otherwise the council would have to require the obstruction to be removed or, alternatively, require the establishment of new practical public access.

### **6.3.1 Fencing, gates and cattle stops on unformed legal road**

In addressing public safety and convenience, councils may require a landholder to take appropriate mitigation action including fencing the boundary of the road or any dangerous place, as provided for under section 353 of the Local Government Act 1974.

To manage, protect and contain livestock, a landholder may construct gates and cattle stops across unformed legal roads, but only with the council's written permission. Section 344 of the Local Government Act 1974 and the Gates and Cattle Stops Order 1955 provide for this.

Any gates across a road must not be locked and a board with the words "Public Road" legibly printed must be affixed to each side of the gate.

Any authorised structures on a road must not create a nuisance or prevent the public from using the road. With the council's permission, a land holder may erect a temporary fence across a road for the purpose of stock control – but it must not inhibit public access.

In addition, a local authority may pass a resolution providing for stock depasturing on a road, as noted in [6.3.3](#).

### **6.3.2 Offence to damage or for structures to obstruct an unformed legal road**

Local councils have a duty to ensure roads are free of obstructions and damage. Section 357 of the Local Government Act 1974 sets out the enforcement provisions and penalties in detail, including for damage to or encroachment over a road. Offences include making or erecting an obstruction or work that has not been authorised by the council.

Obstructions on unformed legal roads include fences, locked gates, buildings and trees – which the council may request be removed.

Section 133 Public Works Act 1981 provides an additional authority for roading authorities to require the owner or occupier of any land adjoining a road to

trim or cut down vegetation that may obstruct the lawful use of a road or damage a road or be detrimental to the road.

In exceptional circumstances the police may be able to help deal with a person deliberately obstructing an unformed legal road – as it is an offence under section 22 of the Summary Offences Act 1981 to obstruct a public way. But it requires a clear and specific warning by police before it becomes an offence under this provision.<sup>34</sup>

### **6.3.3 Offence if livestock obstruct road – unless council resolves otherwise**

Section 33 of the Impounding Act 1955 provides for the impounding of livestock wandering or tethered on any road in such a manner as to obstruct or be reasonably likely to obstruct the road. Further, the definition of road in the Impounding Act 1955 means any place open to or used by the public as of right, including riverbed and riparian land under the control of any local authority or regional council – unless any occupier of land adjoining the riverbed or riparian land is also the lawful occupier of that riverbed or riparian land.

Notwithstanding, section 34 provides that the local authority may, by resolution publicly notified, declare that the provisions of section 33 shall not apply to any road or any portion of a road where depasturing stock create little inconvenience or danger. In such cases warning notices, to the effect that stock is depasturing on or adjacent to the road, are required. These notices must be displayed in a form and locations approved by the local authority which may also require, subject to section 344 of the Local Government Act 1974, construction of gates or cattle stops.

## **6.4 Maintenance and liabilities for unformed roads**

The responsibilities and liabilities of councils in relation to unformed legal roads, as summarised by Brian Hayes, are drawn from the general law relating to roads and are:<sup>35</sup>

- The council has no obligation to form or maintain an unformed legal road.<sup>36</sup>
- If the council carries out no work there is no liability.<sup>37</sup>

<sup>34</sup> See *Langford v Police* [2015] NZHC 2424 for the requirement for warning.

<sup>35</sup> Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access* at page 83.

<sup>36</sup> *Inhabitants of Kowai Road Board v Ashby* (1891) 9 NZLR 658; *Tuapeka County Council v Johns* (1913) 32 NZLR 618.

<sup>37</sup> *Hocking v Attorney-General* (1963) NZLR 513 (CA); *Tombleson v Far North District Council* [2020] NZDC 12171.









- The council's immunity from liability on unformed roads has been held to extend to the filling of holes on part of a long line of unformed road, but there is no duty to repair the whole road.<sup>38</sup>
- The council is immune from liability for the operation of natural causes.<sup>39</sup>
- If the council undertakes any artificial work such as a culvert or bridge on a road which is generally unformed it has a duty of reasonable care in construction, and also a duty of ongoing reasonable observation of that work to ensure that any dangerous change in condition is discovered and remedied.<sup>40</sup>
- The council may require the occupier of any land that contains a hole or other place dangerous to people passing along any road to fill in, cover, or enclose the danger.<sup>41</sup>
- Whenever the safety or convenience of the public applies, the council may require the owner or occupier of any land not separated from a road by a sufficient fence, to enclose the land with a fence that complies with council requirements.<sup>42</sup>

There are additional responsibilities applying to secondary-use roads,<sup>43</sup> such as old 'ferry roads' leading to a river but no longer maintained by the council.<sup>44</sup>

In summary, councils are not liable for repair and maintenance of unformed legal roads or for any damage to the unformed road through erosion, degradation or general wear and tear.<sup>45</sup>

## 6.5 Maintenance of roads by adjoining landholders or third parties

Unformed legal roads are generally in a natural state, or in pasture where the adjoining landholder has incorporated the road into their farming operation.

Although they have no legal right of ownership or occupation, landholders adjoining unformed legal

roads may sometimes improve them by laying down gravel, for example.

Third parties, such as conservation groups, tramping clubs, horse trekking groups, mountain bike clubs or 4WD groups may also desire to develop sections of unformed legal roads to improve public access.

Councils, in addressing such requests, should ensure that their policies, by-laws and maintenance standards clearly set out responsibilities including, where appropriate, the level of council's reasonable observation of such work in order to mitigate possible risks and liabilities.

A council may decline any request to undertake work on an unformed legal road.

38 *Inhabitants of Kowai Road Board v Ashby* (1891) 9 NZLR 658; *Tuapeka County Council v Johns* (1913) 32 NZLR 618.

39 *Tarry v the Taranaki County Council* (1894) 12 NZLR 487 (CA); *Hokianga County v Parlane Brothers* (1940) NZLR 315; *Newsome v Darton Urban District Council* (1938) 3 All ER 9; *Hocking v Attorney-General* (1963) NZLR 513 (CA).

40 *Hocking v Attorney-General* (1963) NZLR 513 (CA).

41 Local Government Act 1974. Section 353 (b).

42 Local Government Act 1974. Section 353 (c.).

43 In this context, a secondary-use road is one which is generally superseded by another newer road but which retains its legal status as a public road. It reverts to use which is largely recreational. A ferry access road down to the water replaced by a bridge, for example.

44 Hayes B. E. (2007). *Roading law as it applies to Unformed Roads* – at page 84.

45 *Tarry v the Taranaki County Council* (1894) 12 NZLR 487 (CA); *Hokianga County v Parlane Brothers* (1940) NZLR 315; *Newsome v Darton Urban District Council* (1938) 3 All ER 9; *Hocking v Attorney-General* (1963) NZLR 513 (CA).

# 7. Stopping of roads

The principle of the perpetual nature of a road may only be rebutted if the road is legally stopped.

In his decision in *Dawes v Hawkins*, Byles J said:

There can be no dedication of a way to the public for a limited time, certain or uncertain.

If dedicated at all, it must be dedicated in perpetuity.

It is also an established maxim 'once a highway always a highway' for the public cannot release their rights, and there is no extinctive presumption or prescription. The only methods of legally stopping a highway are, either by the old writ of *ad quod damnum*, or by proceedings before magistrates under the statute.<sup>46</sup>

The early Public Works Acts from 1876, which vested all roads in the Crown, set out very prescriptive conditions for stopping roads,<sup>47</sup> including for stopping of roads solely for the convenience of a private person.<sup>48</sup> In this latter case, that private person was required to pay all the costs incurred, including the costs of constructing a new replacement road, if necessary. In all cases, detailed public notification and public participation was required to be undertaken by the road controlling authority before a road could be stopped.

Various Land Acts, from 1877, provided a separate and different authority for taking and closing (stopping) roads – for the purposes of settlement and development – to enable the Crown to effect road alterations, deviations, closing and exchanges by consent.<sup>49</sup>

Hayes,<sup>50</sup> outlines in detail the chronological development of these statutory road stopping authorities and notes that:

...the legislative history of the separate processes shows that they were intended for use in different circumstances.<sup>51</sup>

The Native Land Act 1909 (as amended 1928) also provides for road stopping.

These three but separate road stopping processes of the early Public Works Acts, the Land Acts and the Native Land Acts served three very different purposes which continue into current statutes.

The current statutory powers for stopping roads are vested in:

- the Minister of Lands under the Public Works Act 1981 (previously the Land Acts);
- councils under the Local Government Act 1974 (previously the Public Works Acts and the Counties Act 1956); and
- the Māori Land Court under Te Ture Whenua Māori Act 1993 (previously the Native Land Acts).

## 7.1 The Minister may stop a road under the Public Works Act 1981

Under section 116 of the Public Works Act 1981, subject to conditions including the Minister of Lands giving the relevant council at least 10 working days prior notice – but not requiring public notification – the Minister may declare any road or part of a road to be stopped.

Section 116 does not provide a statutory power or authority for councils to initiate and stop an unformed legal road at the request and solely for the convenience of any private person. (Compare section 152 of the Public Works Act 1928 which road stopping powers are mostly now incorporated into the Local Government Act 1974).

As B E Hayes states:

The powers of the Minister, which may be exercised on the election of the Minister, but not on that of the territorial authority, are indicative of an administrative role which places the public interest as an overriding consideration. As an alternative to stopping unformed legal roads continue to be subject to return to the Crown on the request of the Minister

<sup>46</sup> *Dawes v Hawkins* [1860] EngR 968; (1860) 8 CB NS 848; 144 ER 1399.

<sup>47</sup> Public Works Act 1876. Section 93 lists 12 prescriptive conditions for stopping a road.

<sup>48</sup> Public Works Act 1928. Section 152 – road stopped for private benefit.

<sup>49</sup> Land Act 1877, section 162, Land Act 1892 section 13.

<sup>50</sup> Hayes B. E. (2008) *Roads, Water Margins and Riverbeds*, pages 85-90.

<sup>51</sup> *Ibid* at page 87.

of Lands under s 323 of the Local Government Act 1974.<sup>52</sup>

### 7.1.1 Esplanade reserves and marginal strips required

When the Minister stops any road or portion of a road under section 116, and the road is along the mark of mean high-water springs of the sea, or along the bank of any river, or the margin of any lake, then Section 118(1) of the Public Works Act 1981 mandates that the provisions of:

- (a) section 345(3) of the Local Government Act 1974 (relating to esplanade reserves) shall apply if that land was formerly road vested in the local authority, and
- (b) Part 4A of the Conservation Act 1987 (relating to marginal strips) shall apply if that land was formerly a Government road or a State highway or other road vested in the Crown.

## 7.2 Councils may stop roads under the Local Government Act 1974

Section 319(1) (h) sets out the statutory authority and power for a council to stop a road. (Section 319 (1) (d) also gives Councils the power to divert or alter the course of any road).

A council electing to stop an unformed legal road will have made its decision in terms of its policies and general statutory decision making framework developed according to the Local Government Act 2002. Section 342 and schedule 10 of the Local Government Act 1974 set out the specific manner and conditions for progressing the road stopping.

The road stopping process includes detailed public notification with robust objection and appeal requirements. In the event of the council disallowing a public objection, and the objector not subsequently withdrawing their objection, the road stopping proposal and objections must then go to the Environment Court for a final decision.

### 7.2.1 Stopping a road for private benefit – managing wider public interest

Most requests to stop unformed legal roads are initiated by adjoining landholders, not councils.

Stopping roads for private convenience and benefit was specifically provided for in the early legislation – but with requirement to construct new road, if necessary, and with stringent public notice requirements.<sup>53</sup> Those public notice requirements are now incorporated into the Local Government Act 1974. Public notification is particularly important when it comes to stopping unformed legal roads which are generally invisible and absorbed into the rural working

<sup>52</sup> Hayes B. E. (2008) *Roads, Water Margins and Riverbeds*, at page 85 (Local Government Act 1974 - section 323(1) clarifies which unformed roads may be resumed by the Crown).

<sup>53</sup> Compare section 99 Public Works Act 1882 and section 152 Public Works Act 1928 – road stopped for private convenience and benefit was at the cost of applicant, including costs for constructing new road.





landscape. New recreation opportunities may only become apparent from public feedback arising from the public notification of a private land holder's request to stop a road.

The statutory decision making framework of the Local Government Act 2002 and the detailed road stopping processes and controls of the Local Government Act 1974 help councils to place the wider interests of the public ahead of private interests.

The courts uphold the priority of the public's right of passage over private interests.

Blanchard J emphasised this in the *Man O' War* case when he stated:

The integrity of the roading infrastructure is of such importance to the economic and social welfare of any society that it is to be anticipated that the public right to the use of roads will be given a measure of priority when it comes in conflict with private claims.<sup>54</sup>

### **7.2.2 Minister's prior consent required before proceeding to stop rural roads**

Section 342(1) (a) of the Local Government Act 1974 directs that a council shall not proceed to stop any road (or part) in a rural area without the prior consent of the Minister of Lands. This reflects the Crown's residual interest in rural roads and the statutory

provision enabling the Crown to resume unformed legal roads, which are generally rural.

### **7.2.3 Stopped roads along water bodies vest as esplanade reserves**

Stopped roads with river, lake or coastal boundaries must vest as an esplanade reserve. That is for stopped roads along rivers of average width 3m or more, or around the margins of any lake with an area of 8 ha or more, or along the coast. The esplanade reserve shall be 20m wide, or the full width of the stopped road whichever is the lesser.<sup>55</sup> Any accretion that has added to a road being stopped also needs to be accounted for.<sup>56</sup>

## **7.3 Unused road over Māori land may be stopped by court**

Section 324 of the Te Ture Whenua Māori Act 1993 enables the Māori Land Court to make an order to stop a road constituted over any Māori freehold land – or any defined portion of it. Prior to making such an order, the court must have written consent to stop the road, from both the Minister of Transport and the authority having control of the road. The local authority will follow its standard consultation/public notification processes before giving such consent.

<sup>54</sup> *Man O' War Station Ltd v Auckland City Council* (2000) 2 NZLR 267, at p286.

<sup>55</sup> Local Government Act 1974 section 345 (3) and (4). The esplanade reserve width may be subject to a district plan rule.

<sup>56</sup> Section 315(4) Local Government Act 1974 confirms that accretion shall form part of the road.

Wharekai – Te Kau Walkway in Jackson Bay closely follows an unformed legal road.

# 8. Appendix A – Locating unformed legal roads

The public's right to pass and repass over unformed legal road does not extend to crossing private land adjoining the road – unless landholder's permission is given. Therefore people need to navigate unformed roads carefully, as they may be indistinguishable from the surrounding countryside – unless fenced or identified by regular use.

Property boundaries, including most unformed legal roads, are identified in the official cadastral survey record held by Toitū Te Whenua Land Information New Zealand (LINZ). This information is publicly available and forms one of the core mapping layers ubiquitous in most geographic information systems (GIS) including those of Herenga ā Nuku, local authorities, and Google Map applications.

People can deduce the position of most unformed legal roads, with varying degrees of accuracy, by overlaying current imagery with property boundary lines.

Given the quality and accuracy of new imagery, much of the variability between image features and digital cadastral boundary lines can be explained by the historic method of capturing rural property boundaries which was by digitising paper record maps.

Notwithstanding subsequent efforts to improve the accuracy of previously digitised boundaries, many unformed legal road parcels, depicted in the various GIS mapping applications, may differ from their correct position – up to tens of metres in some cases.

Recreational hand-held navigation and positioning technology will typically achieve a 5-10 metre accuracy range. This navigation accuracy is improving as technology develops. But the challenge remains

in coordinating unformed legal roads from GIS applications given the absence of physical boundary marks and other physical structures to correlate against.

We may estimate the mapping accuracy of a road, in the vicinity of the area of interest, using a GIS application. We do this by observing the correlation between boundary fence lines identified on imagery and the corresponding cadastral property boundary lines from the digital cadastral boundary layer.

Landholders have the right of undisturbed possession of their land and the public have the right to pass and repass over an unformed legal road. The challenge is how to navigate these respective rights when the existence of the road is acknowledged but the boundary positions are disputed.

In the event of a significant dispute a cadastral land surveyor may be required to confirm the legal road alignment.

In practice, the precise location of boundaries may not be critical. Rather, an acknowledgement by all parties of the road's existence, providing legal public access from 'A' to 'B', may be enough to achieve pragmatic agreement on a practical public access route.

Landholders, concerned about road users straying onto their land, may wish to identify their property boundary with appropriate markers.

Any issues should be raised with the roading authority, the council, in the first instance.

Depending on the circumstances, Herenga ā Nuku and local recreation groups may also be able to assist.







## **Waimakariri District Council**

### **Road Reserves Fencing and Grazing Policy (S-CP 4560, dated 12 November 2013)**

#### Para 4.2 Grazing

4.2.1 The grazing of road reserve frontages is not permitted on the following roads:

- Tram Road
- Oxford Road
- Rangiora-Woodend Road
- Millton Avenue
- Cones Road (River Road to Carrs Road)
- Fawcetts Road
- Ashley Gorge Road
- Lineside Road
- Depot Road
- Upper Sefton Road
- Dixons Road (Loburn)
- Loburn-Whiterock Road (Dixons Road to Chapel Road)
- Kippenberger Avenue
- River Road (West Belt to Millton Avenue)
- Main North Road
- Williams Street
- Smith Street
- Island Road
- Skewbridge Road
- Flaxton Road
- South Eyre Road from diversion bridge to Tram Road
- All roads within urban areas
- On the mown verge of sections of road regularly mown by the Council or its contractors.