

WAIMAKARIRI DISTRICT COUNCIL

MINUTES OF THE HEARING OF THE ROAD RESERVE MANAGEMENT POLICY REVIEW HELD IN THE COUNCIL CHAMBER, 215 HIGH STREET, RANGIORA ON FRIDAY 20 OCTOBER 2023, COMMENCING AT 11AM AND RECONVENED ON TUESDAY 24 OCTOBER AT 10AM.

HEARING PANEL MEMBERS PRESENT

Councillor Al Blackie
Councillor Tim Fulton (via Teams)
Councillor Philip Redmond

IN ATTENDANCE

J McBride (Roading and Transport Manager), S Binder (Senior Transportation Engineer) and K Rabe (Governance Advisor).

Three members of the public were present during the hearing.

K Rabe opened the hearing and called for nominations for a Chairperson for the Hearing Panel.

1. APPOINT A HEARING PANEL CHAIRPERSON

Moved: Councillor Blackie Seconded: Councillor Fulton

That Councillor Redmond be appointed as Chairperson of the Housing Policy Review Hearing Panel.

CARRIED

At this time Councillor Redmond took the chair for the duration of this hearing and deliberations. He welcomed all parties present at the hearing and requested parties to introduce themselves.

2. APOLOGIES

Moved: Council Redmond Seconded: Councillor Fulton

That an apology for early departure be received and accepted from Councillor Blackie who retired from the meeting at 12pm.

CARRIED

3. CONFLICTS OF INTEREST

There were no conflicts of interest declared by the Hearing Panel members, however, Councillors Blackie and Fulton informed the hearing that they had unformed legal roads on their properties.

4. HEARING OF SUBMISSIONS

NAME	ORGANISATION	COMMENTS
David Ashby	Pineleigh Farm Limited 256 Hicklands Road	D Ashby presented his submission (Trim: 230911141571) noting that he generally supported the draft policy and understood the need for public access in certain circumstance. However, the unformed road on his property was not accessible due to a drain and a power pole blocking the access to the road. • Currently the unformed road did not lead to any destination such as a river, forest, or a significant ecological feature. • The unformed road was in the middle of a paddock that often had stock, including bulls. • There was no reason for people to want access to the road other than to dump rubbish or for possible criminal intent. • There were biodiversity risks from people transferring possibly dangerous viruses, weeds or dogs bringing in diseases which may be harmful to stock.
Karl Dean	Federated Farmers of New Zealand	K Dean spoke to the Federated Farmers submission (Trim: 230911141572) which raised the following concerns: • Unformed roads often ran through paddocks which housed stock or crops and often were not maintained as a 'roadway'. • The unnecessarily bureaucratic process by forcing farmers to apply for a licence to occupy road reserve. • The policy could impact farmers' businesses negatively and make running a business uneconomic. • Safety concern in relation to increased theft and other anti-social behaviour by enabling unrestricted access.
Geoff Holgate	Herenga ā Nuku (Outdoor Access Commission)	G Holgate spoke to the Herenga ā Nuku's submission (Trim: 231004156856) which was concerned that the common law ruling for public access on all roads, including unformed roads, would be contravened. The following points were raised: • In relation to the cost share of sealing roads it was suggested that this was primarily a Council responsibility and therefore the Council should contribute more than 50% of the cost. • Concern that if a business or farmer developed or expands operation and formalise the unformed road that this would become perceived as a private road and dissuade public access. • Concern raised regarding the provision for road closures through the Public Works Act, 1981.

		• The Council had a duty not to contravene the law. Public access was protected and each possible road closure or licence to occupy should be considered on its own merit rather than a blanket ruling. • The option of issuing a licence to occupy was not considered legal, however, the Council could authorise occupation if there was a definite timeframe and a licence to occupy but not a lease was considered appropriate. • Road stopping was not supported, however, in certain instances, Herenga ā Nuku would not object. • All submissions should be weighted on merit as no two submissions were equal. Numbers did not automatically force a decision in their favour. Content and law should always trump 'popular belief'.
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The Hearing was adjourned at 12 noon and reconvened on Tuesday 24 OCTOBER AT 10AM.

HEARING PANEL MEMBERS PRESENT

Councillor Philip Redmond (Chairman)
Councillor Al Blackie
Councillor Tim Fulton

IN ATTENDANCE

J McBride (Roading and Transport Manager), S Binder (Senior Transportation Engineer) and K Rabe (Governance Advisor).

5. HEARING PANEL DELIBERATIONS

The Panel considered the various points raised by the submitters as summarised in pages 5 to 13 of the in the Road Reserve Management Policy Review agenda.

Under 'General Comments' Herenga ā Nuku had suggested that the term 'road reserve' should be amended to 'road corridor' throughout the policy. The Panel believed that the term 'road reserve' was already understood by the general public and changing the term may cause confusion, therefore, the Panel agreed that the term 'road reserve' would be retained.

Under the request to include the sentence "*Public access is a right on all legal roads*" in the Introduction to the policy, the Panel felt that public access was already widely understood and agreed with the staff recommendation that this section did not highlight any of the other legislative or legal foundations for the policy, which instead were expanded upon in the Policy's Objectives. The Panel, however, did agree to the staff recommendation of including a new objective to the Objective section which would read as follows; "*4.7 The policy ensures that the public right of passage along unformed legal road reserve is preserved.*"

The Panel also agreed to the proposed change to the second bullet point in Section 3. 'Scope' and to include "*and the process for stopping unformed legal road*" to the end of the sentence.

Section 5.0 Sealing Roads

The Panel accepted the staff recommendation that sealing low volume roads was not affordable. After consideration of the comments in relation to cost share for sealing roads, whether by Waka Kotahi or residents the Panel agreed that the Council's current policy should remain unchanged.

Section 6.0 Unformed Legal Roads (General)

The Panel considered the matter of grazing or moving stock on unformed roads noting that the matter of moving stock was covered by the 'Stock Movement Bylaw'. In relation to the matter of grazing stock the Panel considered if this activity could be considered as an 'encroachment' of an unformed road and believed that by its nature grazing was a temporary activity and should be allowed as long as public access was not hindered in the long term. The Panel also considered the matter of Licence' to Occupy verses Leases and agreed that licences to occupy were for a shorter fixed term and therefore intended to be temporary, whereas Leases were for a longer term and transferable and therefore not suitable in this instance. In general, the Panel agreed with the staff recommendation and therefore agreed that no changes be made to the policy in relation to the points raised by Federated Farmers in their submission on this section.

In relation to Herenga ā Nuku's suggested amendment to 6.1.1 of the policy which was to include *"has statutory powers to manage and control road a responsibility under the Local Government Act 1974 (Part 21) and Land Transport Act 1998 (Part 3) and has a duty to ensure"*. The Panel agreed to the inclusion of "statutory powers" however did not support the word duty and decided that the word responsibility be retained. The Panel agreed that the term 'plantation forestry' be used instead of 'forestry blocks' and that the following sentence be included. *"Any existing or new Council non-roading assets within unformed legal roads should not obstruct public access"* (6.2.3).

Section 6.3 Private Occupation and Encroachments in Unformed Legal Roads

While the Panel sympathised with farmers concerns regarding security, biodiversity risks and health and safety matters, it acknowledged that the public's right of access on unformed roads could not be denied, and therefore supported the staff's comment that Council's intent was to do so in a manner that discouraged illegal and malicious behaviour. It was also acknowledged that in most cases where there was no desired destination or feature it was unlikely that the public would access unformed roads, and signage would only be required on unformed roads that had such a feature. Section 9.2 dealt with required signage and gates. In relation to the possibility of a disgruntled neighbour staff noted that a licence to occupy would not be permitted for any long term requirements and staff would seek clarity on how neighbours could be involved in the process. The Panel therefore decided that no changes be made to the Policy at this time in relation to these points raised by D Ashby.

In relation to Herenga ā Nuku's suggested addition of a new 6.3.1 which stated, *"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"*, the Panel believed that this should be included and be numbered as 6.3.6 with the remaining items renumbered as appropriate.

In considering the suggested changes to 6.3.2 the Panel believed that the additions were repetitive and added no benefit and therefore should be excluded, however the word 'must' be changed to 'should' and a further note be added stating that *"in case of any conflict this policy shall prevail"* at the end of the sentence. It was also agreed that the word "Draft" should be added to read *"the Draft Council Rural Land Lease and Licence Policy"*.

In relation to the last point the Panel noted that the Council's practice was not to issue leases for unformed road.

6.4 to 6.6 Private Occupation and Encroachment in Unformed Legal Roads

The Panel agreed to the inclusion of (see section 6.6 below) in 6.4.1 as suggested and agreed to the staff suggested wording for a new bullet point in 6.4.1 to read *"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 the Council."*

The 6.4 section heading was changed to *Unauthorised Encroachment*.

The Panel also supported the staff wording for a new 6.5.3 to read *"When considering application to facilitate use of unformed legal roads by walkers, cyclists or equestrians, Council will consider the proposed extent of the modification required to the surface of the unformed legal road, potential for liability, and further maintenance. Any use of Council resources to modify an unformed legal road will need to be approved by the Council."*

In regard to the following three points made by the submitter regarding development on land with an unformed road, the deletion of the provision for the Public Works Act and that Council consult Herenga ā Nuku when considering the stopping of roads, the Panel agreed with the staff recommendation that these changes should not be deleted, but agreed to adopt *"there is no likelihood of a valid objection being received and ..."* from section 6.6.1.

7.0 Roadside Management

The Panel agreed to the suggested text changes to 7.1.3 and 7.5.4.4 and suggested that *"impacts on public access"* be added to the first bullet point of 7.5.6.3 so as to read *"Impact on public access and on traffic safety and sightlines."*

7.3 Grazing on Road Reserve

Staff acknowledged that grazing on berms had benefits for farmers and the Council in berm management however given the risk of higher speeds and traffic volumes on some roads this may be considered a safety concern. The Panel agreed with the staff recommendation which stated that *"Consideration of a 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

Staff informed the Panel that the Engineering Code of Practice was currently being revised to take measures to mitigate flooding due to blocked and unsuitable vehicle crossings. The Panel requested that staff notify Me Beckett regarding this point. The Panel accepted the staff recommendation not to adopt the submitters suggestion.

9.0 Stock Underpass

The Panel agreed to the Federated Farmers amendment which read *"Approval for a stock underpass will not be unreasonably withheld"*, noting that the Council did not withhold approval unnecessarily and the amendment be added to Section 9.1.4 as a bullet point.

The Panel also agreed to the amended wording of 9.2.1 made by Herenga ā Nuku which read *"With approval from the Council, a person may erect a swing gate or cattle stop, and associated fencing, across an unformed legal road in accordance with s 344 of the Local Government Act 1974. A sign must be affixed to the gate indicating it is a public road."*

10.0 Temporary Traffic Management

The Panel agreed that the staff recommendation which read *"The movement of stock is covered under the Waimakariri District Council Stock Movement Bylaw, which outlines the requirements for permitting and traffic control while moving stock along or across the road"* should be included as 10.1.3 to clarify where relevant information on traffic management for the movement of stock could be found. Subsequent sub clauses were to be renumbered accordingly.

12.0 to 13.0 Definitions, Relevant Documents and Legislation

The Panel agreed to the staff recommendation that the changes suggested by Herenga ā Nuku (re page 12 of the summary) be included other than the change from road reserve to road corridor as detailed at the beginning of its deliberations. The Panel also agreed that the "Guidelines for the Management of Unformed Legal Roads by Herenga ā Nuku be cited as a relevant document and adding a definition of 'encroachment' in Section 12.

The Panel agreed to amend the definition of "Unformed Legal Road" (sometimes referred to as Paper Road) and that has been established as a legal public road but which is not formed or maintained by the Council or the New Zealand Transport Agency (Waka Kotahi), and that unformed be removed from Local Government Act 1974 Part 21 and further that S344 (gates and cattle stops) and S.357 (penalties for damage to roads) be added to the bullet points.

Appendix C - Unformed Legal Road Occupation Requirements

The Panel agreed with the staff recommended text in relation to the first bullet point in Appendix C to read *"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

After discussing the matter of 14 days grazing the Panel believed that there should be no stipulation to the time allowed for grazing and therefore recommended that the first bullet point be deleted altogether.

In relation to the point regarding horses being grazed on road reserves the Panel requested that the word tethered be included so as to read *"Horses shall only be grazed upon road reserves when tethered or accompanied by a person"*

The Panel acknowledged that waratahs were a hazard to road users and the public and agreed that the policy remain unchanged in this regard and also that labels be affixed to all live (hot) wires.

In relation to the request from Herenga ā Nuku regarding public access where animals were grazing on berms that the staff wording be included which would read *"Public access on the frontage / berm should be accommodated where practicable."*

After the deliberations were completed S Binder noted that the heading for 6.4 "Unauthorised Occupation" would be amended to "Unauthorised Encroachment", and a definition of encroachment would be added to the definition section (item 12).

After consideration by staff, the definition for Road Reserve was amended to better reflect that this Policy dealt with both sealed, unsealed and unformed roads.

The following wording was later circulated to the Panel to ensure it was supportive of the new definitions which read as follows:

- **Road Encroachment (also Road Occupation)**
Any action or physical obstruction upon, over, or under any portion of a legal road which restricts public access or use. Obstructions not covered by this policy (e.g., excluded or covered elsewhere) include: stock movement, private mailboxes, security bollards, private bus shelters, gates and cattle stops, fencing, verandah supports, outdoor advertising, electric vehicle charging stations, and public or private utilities.
- **Road Reserve (also Road Corridor)**
The area from the property boundary on one side of the legal road to the property boundary on the other side of the legal road, including (but not requiring) any berm or formed footpath and carriageway.

The Panel approved the definitions provided by staff and directed that these be included in the draft policy.

5.1 **Road Reserve Management Policy Review Report – S Binder (Senior Transportation Engineer) and J McBride (Roading and Transport Manager)**

S Binder took the report as read.

Moved: Councillor Redmond

Seconded: Councillor Blackie

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 would be carried out and reported back to the Council at a future date.
- (e) **Notes**, subject to any recommended changes by the Panel, staff would prepare a report to the Council on behalf of the Hearings Panel recommending the adoption of the reviewed Road Reserve Management Policy.

CARRIED

Councillor Redmond thanked S Binder for his work on this Policy and noted that while he sympathized with farmers regarding issues posed by public access to unformed roads, he believed that the policy was a balanced and sensible approach to a challenging issue.

Councillor Blackie concurred.

THERE BEING NO FURTHER BUSINESS, THE HEARING AND DELIBERATIONS CONCLUDED AT 12.17PM.

CONFIRMED



Councillor Redmond
Chairperson
Road Reserve Management Policy Review Hearing Panel

30 October 2023

Date