

Introduction

Access to the great outdoors is part of New Zealand's culture and identity. Outdoor New Zealand is a unique place to enjoy. Our rich recreational heritage – based on access to rivers, lakes, beaches and alpine areas – contributes to our quality of life as well as enhancing our awareness of the natural environment. However, public access to these places is not always clear and people are often unsure about where they can and cannot go.

The New Zealand Walking Access Commission (the Commission) was established by the Walking Access Act 2008 to enhance opportunities for public walking access to New Zealand's great outdoors, while respecting private landholders' rights and property.

One of the requirements of the Commission is to:

“Compile, hold and publish maps and information about land over which members of the public have walking access¹.”

The Commission has developed a Walking Access Mapping System (WAMS), an online resource designed to inform the New Zealand public and overseas visitors about land open to walking access. It can be accessed at www.wams.org.nz or through the Commission website at www.walkingaccess.govt.nz.

The WAMS has been redeveloped by the Commission with new features including mobile functionality and a portal that allows external organisations to input their own data relevant to walking access. It uses topographical and cadastral (land records) information highlighting conservation land, roads (including unformed or paper roads), esplanade strips, and other land open to public access (derived from Land Information New Zealand (LINZ) databases) and aerial photography, put into graphic form.

The mapping system is evolutionary. In addition to topographical and cadastral information, and aerial photography, recreational information provided by groups, agencies and clubs will be progressively added to the recreational information layer.

The WAMS does not exist in isolation and recreational users will continue to be guided by the New Zealand Outdoor Access Code², which provides advice on behaviour and expectations.

With the advent of the WAMS, walkers, trampers, cyclists, hunters and off-road vehicle users have ready access to a way of identifying tracks, roads and walkways they can legally access. This greater public knowledge may result in councils receiving more questions about

¹ *Walking Access Act 2008, No 101, Section 10 (1) (c). New Zealand Parliament*

² *New Zealand Walking Access Commission. (2010). New Zealand Outdoor Access Code.*

the legal status of and accessibility to unformed legal roads, (sometimes known as 'paper roads')³, under their jurisdiction. Landholders may also be concerned about potentially greater use of unformed roads and how this might affect their privacy and security.

These guidelines are designed to explain the law and practice relating to the administration of unformed legal roads from a public access perspective.

Issues may include:

- landholder concerns about unformed legal roads intersecting or bordering their property being publicly identified
- landholders disputing the legal status of unformed legal roads
- members of the public objecting to obstructions such as fences, locked gates or buildings
- members of the public leaving gates open, lighting fires or bringing dogs into contact with a farming operation
- disputes between parties over the location of unformed legal roads
- proposals to stop unformed legal roads; and
- questions about the responsibility of councils for the maintenance of, or safety of users of, unformed legal roads.

³ The term 'paper road' was originally applied to roads that were drawn on the survey plans, but not pegged out on the ground. Case law has established that these roads have the same legal status as any other road.

Background

The Walking Access Act 2008 was the culmination of widespread consultation with the public and interest groups in response to concerns about the availability of public walking access to New Zealand's outdoors. Two expert groups were appointed by the Government to guide the consultation and report on the issues. They were the:

- Land Access Ministerial Reference Group, which reported in 2003
- Walking Access Consultation Panel, which reported in 2007

During this extensive consultation process, concerns were frequently raised about unformed legal roads and rights of public access.

Unformed legal roads are widespread throughout New Zealand. They are documented in the survey records held by Land Information New Zealand (LINZ), although these records do not distinguish between formed and unformed legal roads.

The electronic form of these records can be accessed through Landonline (www.landonline.govt.nz), the LINZ interface for land title and survey records.

The survey records are public information but Landonline is designed for use by lawyers, surveyors and other land professionals rather than people who simply want information for recreational purposes. Topographical maps are also published by LINZ. These maps show the physical features of the landscape, including road formation. Road formation does not necessarily indicate a legal road open to the public.

The WAMS provides walkers, trampers, hunters and others with easily accessible, current information about public access to New Zealand's outdoors.

Specifically, it:

- indicates the location of land that, on the basis of the information held in the LINZ cadastral records, is open to public access
- enables the display of, or links to, additional information about walking access provided by other agencies or the public
- provides information and operational tools for the Commission to facilitate new access and mediate disputes over access.

The system has been designed to be:

- reliable, objective and as accurate as practicable, within the constraints of the underlying data
- current – the database will be kept up-to-date as legal and administrative changes are made (monthly via LINZ)
- free
- accessible, via the Internet, with the facility to view, download and print.

It should be noted, however, that the mapping system is only as accurate as the LINZ-sourced data it relies on. Many unformed legal roads were first defined in very old surveys. Although they met the needs of national mapping and surveying at the time, they are not as accurate as users today may expect. This can be illustrated by comparing high country boundaries defined by old surveys (subsequently manually transferred onto paper record sheets), with modern land information such as aerial or satellite photographs; inconsistencies of tens of metres can be found.

The process of overlaying the different information sources has potential for misalignment, and this needs to be taken into account in identifying the location of roads.

As a clearer picture emerges of the location of publicly accessible land, including unformed legal roads, local councils are likely to face challenges in managing public and private expectations.

Unformed legal roads – a legacy

Most unformed legal roads were established in the early days of settlement, particularly, in the period of provincial government (1854 to 1876). Before Crown land was sold, land was set aside as roads to ensure public access would be available once the land was developed. Roads were shown on survey plans but frequently not built or used. These include the ‘paper’ roads we have inherited today.

As well as intersecting our farmland and bush, unformed legal roads form much of the reserved land around the coast and alongside waterways. These waterside strips of land, sometimes referred to as the ‘Queen’s chain’⁴, were set aside for public use such as access to beaches, rivers and lakes. They were originally designated as ‘roads’, not because they were in many cases ever meant to be actual highways, but because a road was the most clearly understood legal form of public reservation available at the time to guarantee future public availability.

New Zealand has an estimated 56,000 kilometres⁵ of unformed legal roads. Some are part of farmland, others are muddy tracks, some are too rough to cross and some even traverse the side of sheer cliffs. The important thing to remember is that, however impractical, unformed or impassable, unformed legal roads have exactly the same legal status as any public road. They remain open to public access.

The term ‘unformed legal road’ generally refers to roads that:

- have not been formed as recognisable, surfaced roads. They may be just a strip marked on a map, ruts in the ground or indistinguishable from the surrounding countryside; or
- are formed roads that are no longer maintained by the responsible territorial authority, and have, in effect, reverted to being unformed.

Unformed legal roads are no different in law from formed public roads. That is, the public has the right to use them on foot, on horseback, or in vehicles without hindrance from the adjoining landholders or anyone else^{6,7}. However, users of roads should still be considerate of others, including adjoining landholders and their livestock and property.

In summary, unformed legal roads may be unsurfaced, inaccessible and impossible to tell apart from the surrounding land but, in the eyes of the law – under the right to pass and re-pass – they are no different to the tarsealed highways we use every day.

⁴ People often refer to the strip of land (usually 20 metres wide) reserved for public use along the sea shore and the banks of rivers and lakes as the ‘Queen’s chain’ but there is no such legal entity. Instead there are a variety of land types which provide public access and/or protect conservation values. Private land also often extends to the water’s edge so, in reality, no continuous chain of public land exists.

⁵ Ministry of Agriculture and Forestry. (2007). Internal paper.

⁶ Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access contains a full analysis of the rights attaching to unformed legal roads*. Faculty of Law University of Otago, New Zealand in conjunction with The Ministry of Agriculture and Forestry.

⁷ The right of free passage can be restricted by local councils by temporarily closing a road in accordance with the 10th Schedule of the Local Government Act 1974.

The law and unformed legal roads

The Land Transport Act 1998 applies to the regulation of traffic on roads. These guidelines are concerned with roads that are recognised as public highways in law. All references to 'roads' mean roads in this legal sense, as distinct from road formation on private land that does not have this legal status.

An unformed legal road has the same legal status as any other road and the same general laws apply to both. The legal definition of a road is "a public highway, whether used as a carriageway, bridle path or footpath⁸."

The Crown used to hold title to all rural roads under the Public Works Acts. In January 1973 the ownership of roads in counties (which included virtually all of the unformed roads that are the subject of this paper) was transferred to the then county councils⁹.

The current law on the ownership of roads (other than state highways) is in s 316 of the Local Government Act 1974 which vests roads in the relevant council (territorial authority). Management and control of rural roads (as distinct from ownership) was devolved to county councils at a much earlier date, prior to 1900. Part 21 of the Local Government Act 1974 currently is the main statute covering roads, other than state highways, both unformed and formed.

The 1974 Act does not clearly define what a road is, other than by reference to existing roads. The term 'road' and the rights inherent in roads are largely common law concepts.

Roads are separately defined under the Land Transport Act 1998 for the purposes of that Act. This is a wider definition for the purposes of enforcing rules for the regulation of traffic and includes places that are not legal road in the common law sense.

Neither does the 1974 Act describe the characteristics of an 'unformed' road. Section 2 does, however, define what the 'formation' of a road amounts to:

"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..."

An unformed road can, therefore, be taken to mean a road that has not been constructed or enhanced by adding metal, seal or any other type of surface.

⁸ Short W. S. (1907). *A Treatise Upon the Law of Roads, Bridges and Streets in New Zealand*, at p8. New Zealand Government Department of Roads.

⁹ *Counties Act 1956, Section 191A* as inserted by s2 of the *Counties Amendment Act 1972*. New Zealand Parliament.

Part 21 of the 1974 Act spells out councils' terms of ownership and responsibilities. In essence, councils hold title to roads (except state highways) on behalf of the public and are obliged to see that the right of passage is preserved.

Other statutes that have relevance to roads are:

- the Government Roothing Powers Act 1989.
- the Public Works Act 1981.
- The Land Transport Act 1998.

While the same roading legislation generally applies to both formed and unformed roads, there are legislative conditions that apply specifically to unformed roads:

- unformed roads are subject to resumption of ownership by the Crown. When the land is transferred from a council to the Crown it becomes subject to the Land Act 1948¹⁰,
- roads along rivers and the coast, if stopped, become esplanade reserves vested in the council¹¹,
- roads in rural areas cannot be stopped without the consent of the Minister for Land Information¹²,
- unformed roads intersecting or adjoining Crown land may be closed (in this context meaning stopped)¹³,
- unformed roads intersecting or adjoining land owned or acquired by the Crown may be closed prior to subdivision¹⁴,
- local 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 users¹⁵.

A summary of legislation applicable to unformed legal roads can be found in Appendix A.

¹⁰ *Local Government Act 1974. Section 323.* New Zealand Parliament

¹¹ *Local Government Act 1974. Section 345 (3).* New Zealand Parliament. (Note, however, *Resource Management Act 1991. Section 77.* New Zealand Parliament.)

¹² *Local Government Act 1974. Section 342 (1) (a).* New Zealand Parliament

¹³ *Land Act 1948. Section 43 (1).* New Zealand Parliament.

¹⁴ *Land Act 1948. Section 43 (1).* New Zealand Parliament

¹⁵ *Land Transport Act 1988. Section 22AB (1) (g).* New Zealand Parliament

What the courts say

Legal roads may exist by implied dedication even when not identified on a record plan.

Disputes over unformed legal roads have arisen for as long as the roads themselves have existed. Some landholders regard unformed legal roads as an inconvenience; developers often want to get rid of them; and members of the public are sometimes upset when they find them blocked by buildings, fences or locked gates. When these disputes cannot be resolved between affected parties and local councils, the courts may become involved.

The courts have clarified the legal status of unformed legal roads. The key case is the decision of the Privy Council in *Snushall v Kaikoura County (1923)*¹⁶ which reaffirmed decisions previously made by the Supreme Court (now the High Court) and the Court of Appeal.

The Snushall case established, on the authority of the Privy Council, that a road shown on a record plan but not physically 'laid out' on the ground (i.e. a paper road) has the same legal status as a formed legal road¹⁷.

The legal security of an unformed legal road has been protected by the historic and enduring common law right of citizens to pass and repass on a road. This principle has been strongly upheld by the highest courts.

Justice Peter Blanchard when delivering the decision of the Court of Appeal in *Man O' War Station Ltd v Auckland City Council (2002)*¹⁸ said:

"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."

This judgement makes it clear the court gives priority to rights of public access over private interests when it comes to disputes over roads.

Implied dedication

The Man O' War case made clear that the common law doctrine of implied dedication remains in force in New Zealand. The following elements may be relevant to a potential finding of implied dedication:

¹⁶ *Snushall v Kaikoura County (1923)* AC459 (1840-1932) New Zealand Privy Council Cases 670, (1920) NZLR 783 (CA).

¹⁷ Hayes B. E. (2007). *Roading law as it applies to Unformed Roads*. Ministry of Agriculture and Forestry, Wellington, New Zealand.

¹⁸ *Man O' War Station Ltd v Auckland City Council (2002)* 2 NZLR 267, at p286

- A history of public use as a road.
- An expressed intention to dedicate by the relevant land owner.
- Evidence of public expenditure on road formation.
- Evidence in historic record plans of identification of a line of road.

Repairs and maintenance

A territorial authority has full power under s 319 of the Local Government Act 1974 to do whatever is necessary to construct and maintain any road under its control. The historic background on road formation and maintenance is contained in appendix B. In respect of formed roads there seems to be an ongoing obligation to maintain them. It is less clear whether there is any obligation to form or maintain historic unformed legal roads.

This apparent deficit in written law has been addressed by the courts in New Zealand, which have tended to absolve local councils from the responsibility for maintaining or repairing unformed legal roads, or at least made it discretionary.

Writing in *Roads, Water Margins and Riverbeds: the Law on Public Access*,¹⁹ Brian Hayes observes that a raft of case law has established that councils cannot be prosecuted on the grounds of nonfeasance (doing nothing) to maintain roads that have never been formed.

“A territorial authority is not bound to keep in repair roads which have never been formed and remain in a state of nature, and is not liable for injuries caused by defects in such roads to people who may use them.”

Decisions from various court cases have further clarified the responsibilities of councils regarding the upkeep of unformed legal roads.

These can be summarised as follows:

- the council has no obligation to construct or maintain an unformed legal road²⁰ if the council carries out no work there is no liability²¹;
- the council can fill in holes on part of a long line of unformed road, but still be immune from any duty to repair the whole road²²;
- the council is immune from the operation of natural causes²³;
- 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 to monitor and repair any change in conditions that could make the construction dangerous²⁴; and

¹⁹ Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access contains a full analysis of the rights attaching to unformed legal roads*. Faculty of Law University of Otago, New Zealand in conjunction with The Ministry of Agriculture and Forestry.

²⁰ Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access contains a full analysis of the rights attaching to unformed legal roads*. Faculty of Law University of Otago, New Zealand in conjunction with The Ministry of Agriculture and Forestry

²¹ *Hocking v Attorney-General* (1963) NZLR513 (CA). Also refer to the *Resource Management Act 1991. Section 77*. New Zealand Parliament)

²² *Inhabitants of Kowai Road Board v Ashby* (1891) 9 NZLR658; *Tuapeka County Council v Johns* (1913) 32 NZLR618.

²³ *Tarry v the Taranaki County Council* (1894) 12 NZLR487 (CA); *Hokianga County v Parlane Brothers* (1940) NZLR315; *Newsome v Darton Urban District Council* (1938) 3 All ER9; *Hocking v Attorney-General* (1963) NZLR513 (CA).

²⁴ *Hocking v Attorney-General* (1963) NZLR513 (CA).

- where work is carried out by third parties (such as 4WD clubs or adjoining landholder) with the knowledge or awareness of the council, the council's liabilities are as if they had done the work²⁵.

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.²⁶

There are additional responsibilities applying to secondary-use roads, such as old 'ferry roads' leading to a river, which were originally maintained by the council as noted by Hayes.²⁷ In summary, the council is not liable for repair or maintenance for any damage to the unformed road through erosion, degradation or general wear and tear.²⁸

Further background on the case law relating to road stopping is contained in Appendix C.

Maintenance by adjoining landholders

Although they have no legal right of ownership, landholders of land adjoining unformed legal roads sometimes maintain the unformed legal road by laying down a gravel or metal surface or, if they are in pasture, keeping them free of noxious weeds. These actions may benefit the adjoining landholder but they also benefit recreational users because they can walk or ride through the land with greater ease.

This informal arrangement, where adjoining landholders privately care for the land comprising unformed legal roads, has traditionally saved councils time and money for weed and pest control. In return, adjoining landholders have had free use of the land for such purposes as the grazing of stock and have generally not been required to fence their boundaries with the unformed legal roads.

²⁵ Reference needed

²⁶ *Local Government Act 1974. Section 353 (c).* New Zealand Parliament

²⁷ *Local Government Act 1974. Section 353 (c).* New Zealand Parliament

²⁸ *Tarry v Taranaki County Council (1894) 12 NZLR487 (CA); Hokianga County v Parlane Brothers (1940) NZLR315; Newsome v Darton Urban District Council (1938) 3 All ER9; Hocking v Attorney-General (1963) NZLR513 (CA).*

Guidelines for dealing with common issues

Local councils are legally responsible for administering unformed legal roads. As the public becomes more aware of these access ways through use of the WAMS, councils may be called on to provide information, and mediate in disputes. Although the law is clear about the legal status of unformed legal roads, the practical application of the legislation can present challenges. Below are some brief guidelines for dealing with common issues.

Public rights

The public has the right of passage along any road regardless of whether it is formed or unformed unless the road has been closed or access has been restricted by authority acting under or pursuant to a statutory power²⁹. This right applies to all parts of the road³⁰.

Many unformed legal roads are not fenced off from neighbouring farmland, so extra care is needed. To avoid upsetting adjoining landholders, the public should follow some basic rules:

- Leave gates as you find them.
- Don't litter or damage property.
- Don't chase or distress livestock.
- Keep dogs on a leash.

Any negligent behaviour that causes damage to property or distress to an adjoining landholder could result in legal action for loss or damage.

It is important to be aware that many unformed legal roads are indistinguishable from the surrounding countryside and users may unwittingly stray onto the adjoining private land.

The limitations of early survey and mapping techniques and other issues relating to accuracy mean that there can be a significant margin of error in the location of unformed legal roads in rural areas as shown in the cadastral records held by LINZ. In the more remote areas this could be up 50 metres either way in terms of their lateral location.

A hand-held Global Positioning System (GPS) receiver will typically achieve an accuracy of about 5-10 metres (greater accuracies can be achieved with more expensive equipment, commonly used for cadastral surveys). For these reasons, the use of GPS tools cannot be relied on for accurately determining the boundaries of unformed legal roads in rural areas. In the event of a dispute about the precise location of the boundaries of an unformed legal road a modern re-survey may be necessary.

²⁹ For example, the power to close a road under s342 of the Local Government Act 1974 and the power to make bylaws restricting motor vehicle access under s22AB(1)(g) of the Land Transport Act 1998.

³⁰ *Moore v MacMillan (1977) 2NZLR81*

From a practical perspective, the precise location of the boundaries may not be critical. Rather, an acknowledgement of the existence of the road by both the adjoining landholder and the public may be sufficient to reach a practical solution to accepting the public right of way through the area.

Just as private landholders have the right of undisturbed possession of their land, the public has a right to use a legal road. An issue is how the public can enjoy this right where there may be uncertainty as to the location of the boundary between the road and the private land, either because of a lack of precision in the cadastral record or because of a lack of any marked boundary.

This difficulty applies just as much to the landholder in terms of protecting the private land from trespass.

There appears to be little, if any, case law on the point. A person can, however, be in a difficult position if served a trespass notice in a situation where the boundary may be unclear. The notice can be intimidating and, therefore, unlikely to be tested in the courts.

Landholders with unformed legal roads adjoining or intersecting their land, who are concerned about possible trespass by the public, could indicate the whereabouts of the road. This will lessen the likelihood of a road user crossing land which the owner regards as private.

The boundaries of unformed legal roads are frequently not 'pegged out', unlike conventional land parcel boundaries. The exact location of a fixed boundary, if it is disturbed or there is an argument over its location, may be re-established to a degree of accuracy established by the law relating to surveys. Unformed legal roads that have not been defined on the ground do not have this attribute but do exist legally and physically and establish legal boundaries with the adjoining land.

Physical identification by the landholder of the adjoining land of what the landholder considers to be the boundary with the unformed legal road should limit disputes. If, in spite of such identification, a dispute arises, the identified boundary will at least be a starting point from the landholder's perspective.

Private rights

Holders of land adjoining an unformed legal road have the right not to have their livestock disturbed, or property damaged as a result of people passing along an unformed road. Landholders should ensure that livestock do not prevent the use of an unformed legal road by the public. This is reflected in s 33 of the Impounding Act 1955, which 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. There is provision in s 34 of the 1955 Act for a local council to provide exemption from this provision where:

“(it) is satisfied that any road or any portion of a road within its district is so infrequently used by motor traffic that stock depasturing on or near the road will not constitute an inconvenience or danger to the users thereof.”

If landholders wish to keep people off their property they may define and fence their boundaries or place signposts indicating the boundaries.

In terms of protecting safety and convenience of the public, s 353 of the Local Government Act 1974 empowers councils to require an adjoining landholder to fence the boundary of the road.

Fencing and gates

Councils are not financially responsible for the fencing of any legal road boundaries (other than of their own land).

Unformed legal roads may be isolated with gates or cattle stops, installed by the occupier at their expense, in accordance with s 344 of the 1974 Act.

The locking of such gates is not permitted. Section 344 of the 1974 Act requires any person who wishes to erect a gate across the road to apply in writing to the council.

Temporary fencing for the purpose of stock control may be erected across an unformed legal road but must not inhibit pedestrian access.

Does occupation equal ownership?

No. While many unformed legal roads that intersect farmland may have been occupied for many years, this does not give the occupier rights of ownership. This is clearly stated in s 172 (2) of the Land Act 1948. While some adjoining landholders may treat unformed legal roads as though they own them, they have no greater right to use of the road than any member of the public. Moreover, they are not entitled to use the road in any way that obstructs the public right of free passage.

It comes back to the robust legal principle that once a road is created it remains a road unless it is legally stopped. Even if the land parcels of road have been mistakenly included in a certificate of title for a parcel of private land, the law says the roads still exist even if they are not shown or referred to in the title document³¹.

Licences to occupy and leases

Some local councils issue informal ‘licences to occupy’ or ‘fencing permits’ to occupiers of land adjoining unformed legal roads as a kind of grazing right over unformed legal roads.

³¹ *Land Act 1948. Section 77. New Zealand Parliament*

While this has become common practice, there is no provision in the 1974 Act for licences of this kind. Although local councils have control over unformed legal roads, the legal basis is more like that of a caretaker of the land for the public, and their powers do not extend to 'sub leasing' in this manner.

The only statutory authority for licences to occupy is in s 340 of the 1974 Act and applies to the use of roads for motor garages in urban areas. Section 341 of that Act authorises leases of airspace and the subsoil of roads but requires the council to ensure there is no interference with the right of passage.

These two statutory powers highlight the absence of an explicit statutory power to lease or license the use of the road surface.

In the Commission's view it is not lawful to license the occupation of unformed legal roads other than in accordance with explicit statutory authority.

Obstructions on unformed legal roads

If they are to fulfil their intended function, roads should not be obstructed in a way that interferes with the public right of free passage. This is reinforced in the 1974 Act, for example, by s 355 that empowers councils to require owners of abutting land to trim or remove overhanging trees that may interfere with the use of the road. A provision in s 344 empowers councils to authorise cattle stops or gates across roads that are not (longitudinally) fenced.

Obstructions on unformed legal roads may include fences, gates or even buildings. They could also include trees and other vegetation, especially if deliberately cultivated.

There are no explicit enforcement provisions in the 1974 Act in respect of obstructions but keeping roads free of obstructions could be seen as a duty of local councils as part of their management responsibilities for roads.

Fixtures on unformed legal roads such as buildings or trees belong to the owner of the land; that is to the relevant council. The council is therefore entitled to remove such fixtures if they are an obstruction to the right of passage³².

It should be noted that it is an offence under the Summary Offences Act 1981 (s 22) to obstruct a public way. In some circumstances the police may be able to assist in dealing with obstructions on unformed legal roads. Obstructing a public way, which includes unformed roads, requires a clear and specific warning by police before it becomes an offence under this provision³³.

³² See *Moore v MacMillan* (1977) 2NZLR 81 for ownership of structures on legal road.

³³ See *Langford v Police* (2015) NZHC 2424 for the requirement for warning.

If members of the public find an unformed legal road blocked by a fence or other obstruction and they are not able to resolve the issue with the adjoining landholder, they should take up the matter with the responsible council. Involving the police should be a last resort.

Provision for cattle stops and swing gates

Landholders whose properties are intersected by unformed legal roads are, under certain circumstances, allowed to use gates and cattle stops to protect and contain livestock.

This is provided for in s 344 of the Local Government Act 1974 and the Gates and Cattle Stops Order 1955 (see appendix D). Where a gate has been placed across a legal road the public needs to observe the requirements in s8 of the Trespass Act 1980 in respect of gates:

“8. Gates - Every person commits an offence against the Act who

(a)...

(b) with intent to cause loss, annoyance, or inconvenience to any other person,-

(i) Opens and leaves open a shut gate; or

(ii) Unfastens and leaves unfastened a fastened gate; or

(iii) Shuts and leaves shut an open gate - on or leading to any land used for the farming of domestic animals or of any other animals held under lawful authority.”

This section of the Trespass Act 1980 is designed to ensure that farming operations are not hindered by inappropriate behaviour concerning a gate, whether on private land, or on a legal road leading to farmland.

Use by motor vehicles

The use of unformed legal roads by motor vehicles – particularly by four-wheel drive vehicles – can in some circumstances result in damage to unstable surfaces. The provisions in s 342 of the Local Government Act 1974 can be used to close a road temporarily to specified forms of traffic for reasons specified in the statute. These reasons relate, however, almost exclusively to formed roads. Some local councils have investigated options to ban motor vehicles from using unformed legal roads where this poses risks of environmental damage.

The Dunedin City Council has made the following bylaw to deal with such situations. It reads:

“PART 21: RESTRICTION OF TRAFFIC

21.1 Purpose – To prevent damage to the surface of unformed legal roads.

21.2 Statutes – The Council has jurisdiction to create such a bylaw under s 72 of the Transport Act 1962.

21.3 Restriction – The use of motor vehicles on the unformed legal roads identified in the attached schedule is prohibited except for motor vehicles associated with:

- *The Council and its contractors*
- *Telecom and its contractors; and*
- *Adjacent landowners and their contractors or agents for access to their properties;*
- *Activities being carried out under permit as set out in (21.5).*

21.4 Section of legal road subject to bylaw – The sections of road subject to the bylaw are identified on the attached schedule and associated maps. Additional road sections may be added by resolution of the Council, following public consultation on each new proposal.

21.5 Permits – Permits may be obtained to allow events involving motor vehicles to be held on these roads. Applicants will be required to enter into a bond to cover any damage caused to the road or adjacent private property before a permit will be issued.

21.6 Date of effect – This Bylaw shall come into effect on the 1st day of August 2007.”

[the affected roads are listed]³⁴

While the Council has found the bylaws effective in dealing with a small number of specified roads under its jurisdiction, it acknowledges the approach may not be practical in dealing with a large number of roads because each road has to be identified. At the time this bylaw was made there was no specific provision in s 72 of the Transport Act 1962 for regulating unformed legal roads in this way.

A specific by-law making power to address vehicular use of unformed legal roads is provided in Section 22AB (1) (g) of the Land Transport Act 1998 “restricting the use of motor vehicles on unformed legal roads for the purposes of protecting the environment, the road and adjoining land, and the safety of road users”. Such a bylaw would need to address the environmental or safety issues pertaining to particular roads.

Liability

Councils assume no liability for the condition of any unformed legal road or the suitability of any activity carried out on any unformed legal road. Councils may, however, have liability in respect of structures or formation on roads previously constructed but now no longer maintained.

³⁴ Dunedin City Council 2007. *Bylaw 21. Restriction of Traffic*

Liability for personal injury

Compensation for personal injury is provided for in the Accident Compensation Act 2001. There is only very limited potential civil liability for personal injury should this be attributable to a landholder or a council.

Liability under the Health and Safety at Work Act 2015

The object of the Health and Safety at Work Act 2015 is the prevention of harm to all people at work, and others in, or in the vicinity of, places of work.

Landholders, especially farmers, can be concerned about their responsibilities under this act to persons using unformed legal roads for recreational access where these roads intersect or border their land. The Commission developed guidelines on health and safety responsibilities of farmers for recreational visitors in conjunction with a range of stakeholders in 2016.

The Guidelines are available the Commission's website: <http://www.walkingaccess.govt.nz/assets/Uploads/2016-08-04-NZWAC-FAQ-12-Health-and-safety-responsibilities-of-farmers-to-recreational-visitors-WEB.pdf>.

Additionally, the Worksafe fact sheet at <https://worksafe.govt.nz/dmsdocument/293-visitors-and-events-on-farms> provides some guidance.

The key points and duties are in the following extract from the fact sheet:

“Key points

- *Farmers are not responsible for the safety of people crossing a farm in non-work areas and away from farm buildings.*
- *Having a charge in place for attending an event on the farm does not change duties relating to health and safety.*
- *The farmhouse is not considered a workplace under the law.*

What duties do farmers owe visitors on the farm?

Farmers must ensure that work areas on the farm are safe, and don't pose a risk to the health and safety of any person.

Farmers must also ensure that farm buildings and immediate surrounding areas are safe for any person, including visitors. All entrances, exits and anything arising from the buildings, must not put visitors' health and safety at risk.

Farmers are not responsible for the safety of people crossing a farm in non-work areas and away from farm buildings. However, they must ensure that work carried out as part of the business (at any location on the farm), doesn't put others at risk. If risks exist from work previously carried out (e.g. spraying of

hazardous substances), then the farmer would need to reasonably manage these risks for visitors.”

People visiting a farm have a responsibility to take reasonable care that their actions (or lack of action) do not put themselves or others at risk. They must also comply with any reasonable instruction given by the farmer, as far as they’re able to.

In addition, the Commission’s guidelines elaborate as follows:

“As the people in charge of the workplace, the farm owner or manager and their workers have an obligation to ensure visitors are warned of any specific hazards on the farm that they would not normally expect to encounter, such as tree-felling, blasting, earthmoving machinery or pest control activities. This obligation relates only to parts of the farm that visitors will be accessing – there is no need to warn visitors about hazards that are not on or near a route they will be using.

Natural features like bluffs, landslides, rivers and wasp nests are excluded, along with hazards you would expect to find as part of a farm operation, such as barbed wire and electric fences.”

Stopping of unformed legal roads

The term **stopping** refers to the legal process of permanently changing the status of the land so that it is no longer a road. This is different from **closing** a road, which is a temporary measure to restrict use for a period. Some confusion has been caused by earlier practice that sometimes used the term closing when referring to what is now termed stopping.

The essential pre-condition for any road stopping procedure is that the council must be satisfied that the road is not needed for use as a road by the public now or in the foreseeable future; nor for access to coastal marine areas.

There are two ways of stopping a road – through the Local Government Act 1974 and the Public Works Act 1981.

Road stopping under the Local Government Act 1974

Councils have the power to stop roads under the Local Government Act 1974, sections 319 and 342.

“319. General powers of councils in respect of roads – The council shall have the power in respect of roads to do the following things:

(h) To stop or close any road or part thereof in the manner and upon the conditions set out in s 342 and the Tenth Schedule to this Act.

and:

(k) To sell the surplus spoil of roads.

342. Stopping and closing of roads –

The council may, in the manner provided in the Tenth Schedule to this Act, –

(a) Stop any road or part thereof in the district; Provided that the council (not being a borough council) shall not proceed to stop any road or part thereof in a rural area unless the prior consent of the Minister of Lands³⁵ has been obtained...”

The process specified in Schedule 10 of the 1974 Act (see Appendix F) is the method used to stop a road that could be in demand for use by the public and requires any proposal to be publicly notified.

Road stopping under the Public Works Act 1981

The Public Works Act 1981 also has a procedure for stopping roads, which applies to roads under the control of the Crown or a local authority. Section 116 of the 1981 Act provides for

³⁵ *Local Government Act 1974. Section 342 (1) (a).* New Zealand Parliament.

the stopping of roads by declaration of the Minister for Land Information. If the road in question is under the control of a regional council or territorial authority, the Minister must first obtain the authority's consent. There is no requirement for public notification.

As well as stopping roads, the Minister has power under s 323 of the Local Government Act 1974 to request that the land comprising the road be returned to the Crown. It then becomes unallocated Crown land and loses its status as a road.

The powers in relation to road stopping are exercised by LINZ officers, acting under delegation from the Minister.

Policy for stopping roads

The matters that need to be weighed up by local councils when considering stopping a road have been set out clearly in decisions of the Environment Court.

The key part of the process is the need to consider the public interest rather than the private interest of an adjoining landholder. The public notification process in the 10th Schedule of the 1974 Act provides an opportunity for the public to lodge objections but there is nothing to stop councils themselves from investigating the extent of public interest before embarking on the formal process of stopping a road. Not only would this avoid the cost of the formal objection process and an Environment Court hearing, it would provide an opportunity to explore options for alternative public access in advance of the formal process.

Recent cases where the Environment Court has upheld objections to road stopping have typically been instances where a council has sought to stop a road on behalf of an adjoining landholder. The Court has made it clear that the private interests of adjoining landholders are not relevant to the consideration of a stopping.

The view of the Environment Court is clearly expressed:

“A public road, even one that is unformed, may be an asset. It would be difficult to replace. If a public road is valued by the public or sections of it, for use within the scope of the purposes of a public road, that value deserves to be weighed against whatever cause is shown for stopping it as a road and disposing of the land.”³⁶

and:

“We find that there is a need by a significant section of the community for the road, albeit not in the ordinary sense of the right to vehicular passage, but for a wide range of uses including foot and horse passage. We find that the Kokako Road provides a necessary link in passage across the countryside, which fulfils a range of societal needs now and in the future. While we understand the

³⁶ Environment Court 2003. *Decision W21/2003. Paragraph 82.*

concerns of the council and the reason they have advanced for the commercial benefit to a landowner, they have not addressed the need of the local community.”³⁷

There may be scope for councils to explore alternative public access provisions before entering into a road stopping, especially where the unformed legal road is not in an ideal location. An example where the availability of alternative public access facilitated the stopping of a road was in the Waitaki District Council case for the stopping of Bushey Park Road³⁸.

Councils need to take care that they do not fetter the exercise of their powers prior to the formal process, which involves two separate steps: the stopping of the road; and if successful, the subsequent use or disposal of the land. Specifically, councils should not enter into a commitment to dispose of the land to an adjoining landholder prior to consideration of the merits of stopping the road. See *Lower Hutt District Council v Bank*³⁹.

The role and policy of the Minister for Land Information

The Minister for Land Information has three statutory roles in the road stopping process. These roles are exercised by LINZ under delegated authority from the Minister.

The roles are:

- the consent required under s 342 (1) (a) of the Local Government Act 1974 for local councils to stop a road in a rural area
- the power to stop a road under s 116 of the Public Works Act 1981
- the power under s 323 of the Local Government Act 1974 to resume on behalf of the Crown, title to the land comprising an unformed road.

The policies for these functions are reflected in LINZ standard (LINZS15002) for the stopping or resumption of roads dated 22 August 2012.⁴⁰

The intended use of the standard is stated as:

“(a) A local authority, the New Zealand Transport Agency, and any Government agency or their contractor must use this standard when seeking a decision from the Minister or Land Information New Zealand (LINZ) on the stopping and resuming of a road.

(b) All applications under this standard must be made to LINZ, as LINZ acts on delegated authority from the Minister.”

³⁷ Environment Court 2003. *Decision A83/2002.Paragraphs 48 & 49*

³⁸ Environment Court 2005. *Decision C100/2005.*

³⁹ *Lower Hutt City Council v Bank [1974] 1 NZLR545*

⁴⁰ Refer Appendix E or <http://www.linz.govt.nz/crown-property/standards-guidelines/crown-property-standards/index.aspx>

The purpose of the standard is expressed as follows:

“The purpose of this standard is to ensure that the Minister for Land Information’s role in road stopping or resumption is correctly carried out and that the protocols the Crown has with Ngāti Mutunga and Ngāti Tama are followed when a road is proposed to be resumed.”

Two statutory processes for stopping a road are available – that under s 342 of the Local Government Act 1974, or that under s 116 of the Public Works Act 1981 – the standard states:

“The Public Works Act 1981 (PWA) and the Local Government Act 1974 (LGA) set out procedures for stopping of land that has the status of road, and the LGA also sets out procedures for any resuming of land that has the status of road. The Crown must use the provisions of the PWA to stop roads. Local authorities may use the provisions of the LGA or request the Minister use the provisions of the PWA to stop roads.”

The standard goes on to say:

“Where a local authority makes application to the Minister to use s 116 of the PWA to stop a road it is to provide the Minister with reasons why it considers use of s 116 of the PWA is more appropriate than s 342 of the LGA.”

The decision whether to stop a road under s 116 of the PWA is for the Minister. LINZ has advised that the power for the Crown to take back the land comprising an unformed legal road by declaration by the Minister is rarely used. It has the effect of stopping the road.

Included in the standard is the requirement for the following information:

“(d) whether the road stopping will deny or restrict access to other areas, including bush, river, or sea,

(e) details of the intended recipient of the land once the land has been resumed by the Crown and is disposed of.”

Stopping Roads along Waterways

In his 2007 publication *Roading Law as it applies to unformed roads*⁴¹, Brian Hayes describes how successive law changes have weakened the protected status of roads along waterways.

“From 1882 to 1952, roads along rivers were statutorily protected and could not be stopped. At various times since, a road along water, if stopped became:

- *if in a municipality, a public reserve for public convenience or utility (1954)*
- *an esplanade reserve (1972)*

⁴¹ Hayes B. E. (2007). *Roading law as it applies to Unformed Roads*. Ministry of Agriculture and Forestry, Wellington, New Zealand

- a recreation reserve (1977)
- a reserve for the purposes of providing access to the river, stream, lake or sea (1978)
- an esplanade reserve (1991, 1993).

Now the stopping of a road along water may be governed by s 77 of the Resource Management Act 1991 which empowers a territorial authority in its district plan provide that s 345(3) of the Local Government Act 1974 will not apply. In that event, public access to the water may be lost when a waterside road is stopped. Roads along water, which once had unique statutory protection, are now (in theory but hopefully not in practice) the least protected for public access.⁴²

The New Zealand Coastal Policy Statement gives prominence to public access⁴³.

Unformed legal roads in the marine and coastal area

Section 14 of the Marine and Coastal Area (Takutai Moana) Act 2011 provides that road, whether formed or unformed, located in the marine and coastal area is not part of the public marine and coastal area. Provision is made for the need for the unformed road to be reviewed over a period up to 15 years, and if not formed or intended to be formed it is deemed to be stopped and becomes part of the marine and coastal area. These roads were in the foreshore mainly as a result of coastal erosion, although technical differences in the definition of the boundary with the foreshore has probably meant that parts of most roads bounding the foreshore are liable to be stopped. Eventually there will be no unformed legal roads in the marine and coastal area, although the landward margin of road if it is in the marine and coastal area remains the boundary of the adjoining land.

Originally, under the Crown Grants Act 1908, the edge of the seashore was the line of high water mark at ordinary tides and roads along the coast ran along and upwards of this line. Under the Marine and Coastal Area (Takutai Moana) Act 2011 the foreshore is the marine area up to the line of mean high water springs; i.e. the foreshore may extend further inland. As a result, in many cases the coastal road, which in any event may have suffered erosion, is now in whole or in part included in the marine and coastal area and is subject to the stopping process described above⁴⁴

Walkways over unformed legal roads

⁴² Hayes B. E. (2007). *Roading law as it applies to Unformed Roads*. Ministry of Agriculture and Forestry, Wellington, New Zealand

⁴³ <http://www.doc.govt.nz/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement/>

⁴⁴ The Marine and Coastal Area (Takutai Moana) Bill, currently (at January 2011) is before the New Zealand Parliament. The Bill appears not to affect the stopping of road below mean high water springs.

Prior to the enactment of the Walking Access Act 2008 there was provision under the then New Zealand Walkways Act 1990 for walkways to be made on unformed legal roads. This is no longer possible.

Environment Court Precedents

The Environment Court has noted⁴⁵ that the local Government Act is noticeably lacking in direction as to what the relevant factors might be when considering road stopping proposal and this might lead to the Court being able to have regard to a wider range of relevant factors, which might vary from case to case.

What is clear however, are the widely accepted principles identified by the Court which should be considered for proposed road stoppings, the main one being the need for the road for public use, not the need for the stopping⁴⁶.

Other principles the Court has identified to be relevant include⁴⁷:

- There is reasonable cause to justify the proposal,
- The issue of adequate access to lands in the vicinity is provided for⁴⁸,
- The merits of the proposal in relation to the road itself, and whether the public benefit to be gained is outweighed by any private injury that would follow⁴⁹,

While it may be necessary to form an opinion as to the desirability in the public interest of the purpose to which the road will be put, that purpose is not within the Court's power to stipulate. The Court's power is limited to confirming, modifying or reversing the decision to stop the roads.

Burden of proof

The burden of providing reasonable cause to justify the application is on the Council, which accords with usual practice of expecting cause to be shown to alter the status quo⁵⁰.

Public purpose/public use

⁴⁵ *Re New Plymouth District Council (2011)* NZ EnvC 88

⁴⁶ *Re Ruapehu District Council A 83/2002*

⁴⁷ Enunciated in *Re Ruapehu District Council A 83/2002*, followed in *Re Central Otago District Council (2010)* NZEnvC 364 and *Re New Plymouth District Council (2011)* NZ EnvC 88.

⁴⁸ *Re Ruapehu District Council* and also noted in *Re Central Otago District Council (2010)* NZEnvC 364. Both cases noted this had previously been a mandatory consideration by virtue of the Tenth Schedule under the Resource Management Act 1991, now removed by amendment.

⁴⁹ The private injury as a result of stopping the road, not as a result of not stopping the roads

⁵⁰ *Upper Hutt City Council v Akatarawa Recreational Access Committee*

One of the public purposes/public uses that councils need to consider is recreation.⁵¹ There is nothing in the legislation prescribing the sort of use that must be taken into account, therefore, recreation is a relevant consideration.

Past, present or future usage

It is not fatal that there is an absence of past or present use. In one case there was no history of the use of a road in the last 30 years⁵² but the Court considered that of limited significance as changed demographics of the area were anticipated by the district plan which made the past and the present uncertain predictors of the future. There were also major practical physical impediments in that case to the public use of the road⁵³.

Formation and present condition of road

It does not matter whether a road meets Council standards for formation of a road⁵⁴. The present condition of an unformed section of a road is not necessarily a ground for stopping a road. In one case a road was asserted to be impassable, but the Court found that determined hikers could cross it and if a track was cut through some dense scrub and a few trees removed, the road would be passable on horseback, four-wheel drive, quad bikes, mountain bikes and other recreational vehicles⁵⁵.

Private benefit

Any private benefit which might flow from a stopping proposal is incidental. The most important focus is the need for the road for public use⁵⁶.

Adjoining landowner/safety

The effects of the road on the operation of the landowner in whose property the road might be situated are of little relevance to the road stopping. If there is reason and purpose for the road to remain, an inconvenience to the landowner is not the Court's concern.⁵⁷

Summary

The principles and matters for councils to consider for road stopping proposals are:

⁵¹ *Re Ruapehu District Council* [39]-[46], *Upper Hutt City Council v Akatarawa Recreational Access Committee Incorporated* W21/2003 [39]-[46].

⁵² *Re Central Otago District Council* [26] and [27]. The landowner in that case asserted no-one had requested to use the road for over fifty years.

⁵³ There was a substantial gate in a high deer fence at one end of the road and no indication of any public access with evidence of the gate being both locked and padlocked.

⁵⁴ *Re Central Otago District Council*

⁵⁵ *Upper Hutt City Council v Akatarawa Recreational Access Committee* [44]-[45].

⁵⁶ *Re Central Otago District Council* (2010), adopting the position stated by the court in *Re an application by Waitaki District Council* C74/2006 para [24].

⁵⁷ *Re an application by Waitaki District Council*, [22]-[24]

- the Council's explanation as to why the road is to be stopped and the purpose or purposes to which the stopped road will be put⁵⁸
- the provisions of the District Plan
- the need for the road for public use, not the need for the stopping - has the council discharge its burden of proof to justify altering the status quo⁵⁹
- there is reasonable cause to justify the proposal - has the council established the roads have no public purpose⁶⁰
- the issue of adequate access to lands in the vicinity is provided for⁶¹
- the merits of the proposal in relation to the road itself, and whether the public benefit to be gained is outweighed by any private injury that would follow⁶²
- has the Council considered the public purposes/public uses for recreation⁶³ including potential future use (the past and the present being uncertain predictors of the future)

Has the council erroneously:

- relied on the fact the roads don't meet Council standards for formation of the road⁶⁴?
- relied on the present condition of unformed sections of the roads (this is not necessarily a ground for not stopping a road)?
- considered a private benefit which might flow from a stopping proposal (it can only be incidental -the most important focus is the need for the road for public use)⁶⁵?
- considered the effects of the road on the operation of the landowner in whose property the road might be situated (they are of little relevance to the road stopping an inconvenience to the landowner is not the Court's concern.)⁶⁶?

⁵⁸ Clause 1 tenth schedule LGA 1974.

⁵⁹ *Upper Hutt City Council v Akatarawa Recreational Access Committee*

⁶⁰ *Re Central Otago District Council (2010)*.

⁶¹ *Re Ruapehu District Council* and also noted in *Re Central Otago District Council [2010]* NZEnvC 364. Both cases noted this had previously been a mandatory consideration by virtue of the Tenth Schedule under the Resource Management Act 1991, now removed by amendment.

⁶² The private injury as a result of stopping the road, not as a result of not stopping the roads.

⁶³ *Re Ruapehu District Council [39]-[46]*, *Upper Hutt City Council v Akatarawa Recreational Access Committee Incorporated W21/2003 [39]-[46]*.

⁶⁴ *Re Central Otago District Council*

⁶⁵ *Re Central Otago District Council [2010]*, adopting the position stated by the court in *Re an application by Waitaki District Council C74/2006 para [24]*.

⁶⁶ *Re an application by Waitaki District Council, [22]-[24]*

Recommended best practice

Issue	What the law says	Recommended action
Public rights	The public has rights of free passage on unformed legal roads.	Councils should: <ul style="list-style-type: none"> • uphold those rights • increase public awareness of them • legally enforce, if necessary • accept responsibility for any fixtures on roads that obstruct the public right of free passage
Private rights	Private landholders have a right to privacy and not to have their property or stock interfered with or damaged by recreational users of unformed legal roads.	Councils should: <ul style="list-style-type: none"> • make sure recreational groups are fully aware of their obligations • encourage landholders to use appropriate signage to clearly establish boundaries between their land and unformed legal roads • advise adjoining landholders of their rights to legal redress if their rights are seriously breached.
Leases and licences to occupy	There is no provision in the Local Government Act 1974 for leases or licences of this kind other than in permits in respect of motor garages (s 340) and leases of airspace and subsoil (s 341).	Councils should: <ul style="list-style-type: none"> • review any such leases or licences for compliance with the law • grant such licences or leases only in accordance with the relevant statutory powers.
Occupation v ownership	Long-term occupation of publicly reserved land does not confer rights of ownership.	Councils should ensure landholders are aware of the legal status of unformed legal roads that intersect or border their properties.
Obstructions	It is unlawful to block the public right of free passage unless this is done by a territorial authority using a statutory power.	Councils should: <ul style="list-style-type: none"> • ensure adjoining landholders do not fence or place locked gates across roads • ensure that any gates or cattle stops across roads are authorised by the council • investigate and deal with complaints by the public about unlawful obstructions • consider the scope to require landholders to fence roads to protect the safety and convenience of the public • note that there is a remedy in the Summary Offences Act 1981 for unlawfully obstructing a road but that this requires action by the Police

Repairs & maintenance	Councils may not be held liable for nonfeasance in respect of the formation and maintenance of legal roads that have never been formed, but may have some liability for abandoned structures (such as bridges and culverts) or formation on roads that are no longer maintained.	Councils should be aware of the case law establishing their legal obligations regarding maintenance and repair.
Use by motor vehicles	Motor vehicles may in law use unformed legal roads. There is provision in the Land Transport Act 1998 to make bylaws restricting the use of motor vehicles on roads.	Councils should be sensitive to landholders' concerns about vehicles driving over farmland or fragile tracks and work with them to resolve such concerns. Any bylaws should be made in compliance with the provisions in s 22AB (1) (g) of the Land Transport Act 1998.
Cattle stops & swing gates	The law provides, in certain circumstances, for cattle stops and swing gates to be placed across unformed legal roads (s 344 of LGA 1974).	Councils should: <ul style="list-style-type: none"> • ensure the criteria are met before such rights are granted • use discretion in applying this provision • make sure landholders know swing gates are not to be locked and should carry appropriate signage.
Public safety	Compensation for personal injury is provided for in the Accident Compensation Act 2001. There is only very limited potential civil liability for personal injury attributable to a landholder or a council. However, councils can direct adjoining landholders to fence the boundary between their property and an unformed legal road if there is an issue of public safety. Because some unformed legal roads may be workplaces, or adjoin workplaces, some provisions of the Health and Safety at Work 2015 may apply, such as the obligation of persons in control of a workplace to warn visitors about extraordinary work-related hazards, including those that may affect adjoining public land.	Councils should: <ul style="list-style-type: none"> • be aware of any potential hazards that might arise from structures on unformed legal roads • be familiar with the provisions of the Health and Safety at Work Act 2015 as it applies to authorised visitors to farms or other rural land.
Stopping of roads	Councils can stop roads in accordance with s 342 of the Local Government Act 1974 and through following the process outlined in the 10th Schedule of the Act. Consent must be gained from the Minister for Land Information before roads in rural areas can be stopped. Roads along rivers, waterways and lakes, if stopped, must become esplanade reserves under s 77 of the Resource Management Act 1991 unless a plan provides otherwise. The Minister for Land Information may also stop roads under s 116 of the Public Works Act 1981.	Councils should take account of LINZ Standard 15002 and the decisions of the Environment Court in considering proposals to stop unformed legal roads. They should not fetter their decision-making by entering into prior commitments with adjoining landholders. Provisions in plans that may affect unformed legal roads must take into account the New Zealand Coastal Policy Statement 2010.

Glossary

Accretion: The gradual build up of dry land along a water body (beach, river or lake) through the action of the water on the bed of the water body.

Cadastral records: Spatial data held in Landonline and survey records from which this data was derived which shows legal boundaries, including formed and unformed roads.

Council: A territorial authority.

Erosion: The gradual loss of land along a water body (beach, river or lake) through the action of the water on the land.

Esplanade reserve: Land along any sea, river, or lake that, on the subdivision of land, is set aside for the purpose of conservation, public access, or public recreation. The reserves are usually vested in the local authority and subject to the protection of the Reserves Act 1977.

Esplanade strips: A form of statutory easement that may be required as an alternative to esplanade reserves. As well as being established on subdivision, they may also be established by agreement with the landholder.

Public access may be restricted if the easement specifies this.

Formation: In relation to roads, formation means the same as the construction of the road and includes gravelling, metalling, sealing or permanently surfacing the road.

Landonline: is New Zealand's online database for land title and survey information. Landonline enables surveyors, lawyers and other land professionals (including territorial local authorities) to search and lodge title dealings and survey data digitally – www.landonline.govt.nz

LINZ: Land Information New Zealand is a New Zealand government department responsible for land titles, geodetic and cadastral survey systems, topographic information, hydrographic information, managing Crown property and a variety of other functions.

Paper road: A term often used to refer to an unformed legal road. The use of the term unformed legal roads is preferred in this document because 'paper road' can appear to reduce the status of the roads as legal roads with the same rights of use as any other road.

Queen's chain: The Queen's chain is a popular term referring to a strip of land (usually 20 metres wide) reserved for public use above the sea shore and the banks of rivers and lakes. The Queen's chain is not a legal term. A variety of different types of public land exist for conservation reasons and to preserve public access. There are significant gaps in the reserves of water margin land.

Road: In this publication refers to a road as defined in the Local Government Act 1974 that is a legally recognised public road. A legal road is subject to a common

law right of passage. Almost all rural legal roads in New Zealand are of a nominal width of 20 metres. Note that the Land Transport Act 1998 has an extended definition of road for the purposes of that Act that includes places that are not legal road in the common law sense.

Road controlling authority: A person or organisation having control of a road for the purposes of the Land Transport Act 1998.

Road stopping: This is the process of stopping a formed or unformed legal road and removing its legal status as a road.

Rural area: A rural area is defined in the Local Government Act 1974 as 'an area zoned rural in a proposed or an operative district plan'.

Spatial data: Data that represents information about the physical location of something.

Territorial authority: A city council or a district council recognised as such under the Local Government Act 2002.

Topographic maps: Topography involves studying and describing the surface features of the land. The most common way of describing the surface of the Earth is with topographic maps. These are graphic, detailed representations of the land's natural and man-made features, represented to scale.

Unformed legal road: A legal road that has either never been formed or is not maintained by the council. It exists legally,

(i.e. is shown on an official plan) but is not physically formed.

Unformed legal roads have the same status as any other road. Road rules apply, the public has the same right to use them, and landholders are obliged to respect public use. Unformed legal roads often border or intersect private land. They can be key points of entry to nationally treasured resources (forests, parks, rivers, coastlines, and lakes).

WAMS: Is the Walking Access Mapping System developed by the New Zealand Walking Access Commission. The system provides an accessible, user-friendly online resource for people wanting to find areas of public land which they can use for recreational purposes – www.wams.org.nz

Walking access: As defined in the Walking Access Act 2008 is the right of any member of the public to gain access to the New Zealand outdoors by passing on foot across land over which the public has rights of access and performing any activity that is reasonably incidental to that passing.

Water margin: Refers to the point at which the water in a sea, lake or river adjoins dry land. For legal purposes, more specific terms are used, such as mean high-water mark or mean high-water springs.

Appendix A

Legislation applicable to unformed legal roads

Legislation	Relevant provisions	Administering
The Local Government Act 1974 (Part 21)	Part 21 contains the regulatory regime that applies to roads. It includes a provision that if a water margin road is stopped it becomes an esplanade reserve.	Department of Internal Affairs for the statute itself; the relevant territorial authority for enforcement and statutory powers.
The Government Roothing Powers Act 1989	Part 4 relates to the powers of the Government to make and control roads. It applies largely to state highways and motorways and is of limited relevance to unformed legal roads.	Ministry of Transport.
The Impounding Act 1955	Provides for the impounding of livestock on roads; exemptions may be granted by the relevant local authority.	Department of Internal Affairs for the statute; the appropriate local authority for enforcement and statutory powers.
The Public Works Act 1981 (Parts 8 and 9)	Provides for the stopping of roads by Ministerial decision.	Land Information New Zealand.
The Gates and Cattle Stops Order 1955 (made under the Public Works Act 1981), see Appendix G in this guide	Prescribes the form and construction of gates and cattle stops which have been authorised to be placed across roads.	Land Information New Zealand for the statute; the appropriate local authority for compliance.
The Land Transport Act 1998	The rules for traffic behaviour on roads, including powers for Road Controlling Authorities to make bylaws for specified purposes.	Ministry of Transport.
The Summary Offences Act 1981 (s 21 and 22)	Makes it an offence to intimidate (relevant to deterring the public from using an unformed legal road) and to obstruct a public way.	Ministry of Justice for the Act; Police for enforcement.

<p>The Marine and Coastal Area (Takutai Moana) Act 2011</p>	<p>Provides for the phased stopping of unformed roads in the marine and coastal area if they are not required for formation. The relevant land becomes common marine and coastal area. It appears that the landward margin of the stopped road remains the boundary of the adjoining land.</p>	<p>Department of Conservation. Some functions may be delegated to a council.</p>
<p>The Walking Access Act 2008</p>	<p>Established the New Zealand Walking Access Commission to safeguard and enhance opportunities for public walking access to the great outdoors, while respecting private landholders' rights and property.</p>	<p>New Zealand Walking Access Commission.</p>

Appendix B

Historical background on road formation and maintenance

The physical formation of roads and subsequent repair and maintenance has an obvious connection. So far as formation (or in context, the absence of it) is concerned, different rules applied depending on what period of history one is looking at.

- the pioneering period (1840 – 1900)
- the post pioneering period.

The Public Works Amendment Act 1900 introduced compulsory requirements for formation. Roads had to be a standard width of one chain, and statutorily dedicated to the public prior to actual use. Before 1900 the Crown was the principal subdivider but as land was bought and settled, substantial private subdivision began to take place. The Public Works Amendment Act 1900 sought to control private subdivision.

Neither the Crown nor the private subdivider could be compelled to form the roads they created on plans originating in the pioneering period, but since 1900 private subdividers have had to form roads or provide for physical access. For this reason, unformed legal roads on private subdivisions ceased to be a consideration after 1900.

In counties, the Crown divested management and control of rural roads to the county councils early in the pioneering period. If the Crown was exempt from an obligation to form and repair, given the vast distances of unformed roads, what then was the accountability of the county councils, which did have a legal obligation as part of their management responsibilities for construction and repair? The courts eventually protected councils from what would have been an unsustainable financial burden.

The decision of *Snushell v Kaikoura County* primarily confirms that unformed legal roads are like any other road. However, the observations of the judges on other relevant matters are significant and authoritative.

Justice Sim in his Court of Appeal judgement (1920) NZLR 783 at 808 said:

*“In the present case the County Council has the control and management of the roads in the county. It has the right to construct and maintain these roads, and also a duty to do so although, as pointed out in *Tuapeka County Council v Johns*, that duty cannot be enforced by indictment or by action.”*

Justice Sim noted that there is a duty on the controlling authority of a legal road to construct and repair. Given the special nature of the then existing unformed roads in New Zealand, the courts, on the basis of earlier decisions⁶⁷, will not enforce that obligation.

However, if a council accepts the vesting of land as a road and that road is unformed, the council will have a duty to form and maintain it and the council may be compelled to do so. This has been the law for more than 100 years, providing a caution for councils.

⁶⁷ Chapman KC (Later Mr Justice Chapman) counsel in *Bank of New Zealand v District Land Registrar (Auckland) (1907)* 27 NZLR126. If the applicant's contention is correct and these [unformed] roads have been dedicated, the local authority will have to maintain twenty five miles of badly made or unmade roads running through a private estate, and that would throw a very heavy burden upon the ratepayers." [the words in brackets added]. Note also the decision of the Court of Appeal in *District court v Brightwell and Findlay (1912)* 31 NZLR707.

Appendix C

Environment Court case studies

Ruapehu District Council

Environment Court⁶⁸, 30 January 2002.

The issue

The Ruapehu District Council wanted to stop an 11 kilometre section of an unformed legal road which ran through a property owned by Ruatiti Wilderness Limited. The council received a number of objections and referred the matter to the Environment Court.

Council's submission

The council wanted to stop the road on behalf of the private owner who planned to develop the land as a tourist park and deer hunting area. It argued the road would become a danger to the public when hunters were shooting in the area. The council also said the road was redundant to its needs 'at present and in the future'.

Objector's case

There were numerous objections to the road stopping. Reasons included its:

- importance as a public access way
- interest to trampers, mountain bikers and horse trekkers
- historical significance
- need to be maintained for future generations.

The Court

In considering the matter, the court relied on decisions by the former Planning Tribunal and English case law. It had this to say about the conflicting interests.

"When exercising our powers to stop a road we are required to consider the merits of the proposal in relation to the road itself and must judge whether the public benefit to be gained by the proposed stopping is outweighed by the private injury which would follow the proposal."

It also noted:

"It is clear that access by the public has been curtailed by the land use management practices of the proprietor who owns the land on both sides of the

⁶⁸ Environment Court 2002 Decision A083/02 ELRNZ. Reference 8 ELERNZ 144.

road. The road is currently incorporated into the farm property. Surveillance cameras, fences and barriers have prevented public usage and continue to do so. It appears that the owner has arrogated to itself a right to close the road.”

Outcome

The court determined that the central issue in this case was establishing whether there was a public need for the road in question. It decided there was.

“The evidence clearly establishes that until the adjacent landowner made it difficult, a significant number of the community used the road for a variety of purposes: These included:

- *trekking*
- *tramping*
- *camping*
- *use of the road as part of a wider network linking tourists and recreation passages.*

We find that there is a need by a significant section of the community for the road, albeit not in the ordinary sense of the right to vehicular passage, but for a wide range of uses including foot and horse passage. While we understand the concerns of the council and the reason they have advanced for the commercial benefit to a landowner, they have not addressed the need of the local community.”

The court also found the road provided an important link across the countryside, which could be developed in future. It reversed the council’s decision to stop it.

In essence the decision made it clear that the court would not agree to the stopping of a road where there was a public interest in keeping it. The public interest could be a current use or a potential future use, and use extended to recreational use.

Upper Hutt City Council

Environment Court⁶⁹, 17, 18 and 19, February 2003.

The issue

The road in question is an unformed legal road extending across Whiteman’s Valley over a ridge into Wainuiomata. Most of the historic road has never been formed or used and the council, supported by the owners of the land through which it passes, wanted the unformed section to be stopped and the land sold to the adjoining owners, who planned to develop a rural subdivision.

⁶⁹ Environment Court 2003 *Decision W 21/2003*.

Council's submission

The council arguments included:

- the road is impassable in its present state
- it will never be required as a road
- it allows access to private lands by unwanted intruders
- the council does not want responsibility for safety of people using it.

Objector's case

Objections were lodged by a recreational access group and two four-wheel-drive clubs.

The court

The court rejected previous decisions from the former Planning Tribunal which suggested there was no obligation on local councils to keep roads open for recreational use. Instead it relied on the finding of the 2002 Ruapehu District Council case in reaching its decision and gave weight to rights of public access.

“A public road, even one that is unformed, may be an asset. It would be difficult to replace. If a public road is valued by the public or sections of it, for use within the scope of the purposes of a public road, that value deserves to be weighed against whatever cause is shown for stopping it as a road and disposing of the land.”

Outcome

The court ruled that the road should not be stopped. It accepted that although the terrain the road crossed was difficult in places for vehicles, it was not impossible, and it could be walked, especially if the council removed some of the obstructions.

“We have also found that the section in question is required now as a public road by some members of the public for use for recreational purposes. That is likely to continue in the future.”

The court determined that the private benefit to the land owner was not relevant to consideration by the court and rights of public access now and in the future was the paramount consideration.

Tasman District Council

Environment Court⁷⁰, 26 January 2009.

⁷⁰ Environment Court 2003 Decision W 004/2009.

The issue

The road in question consisted of three parts: the first was formed with a gravel surface, the second was unformed but could be used as a four wheel drive track and the third was unformed and was a farm track.

The applicant requested that the Tasman District Council stop the part of the unformed legal road which intersected the land which was to be subdivided.

Council's submission

Council's main reasons for stopping the unformed legal road were:

- there were adequate roads in the area to accommodate the increased traffic
- a condition of the subdivision consent was for an existing road to be upgraded with the intention it would service the subdivision
- a walkway was being constructed by the applicant and this would mitigate any negative effects of the stopping of the unformed road
- construction of the paper road would be difficult and expensive due to the terrain.

Objector's case

The primary objection was the increased volume of cars as a result of the subdivision.

Outcome

The court reversed the council's decision to stop the road. Its main reasons were:

- the Tasman Resource Management Plan (TRMP) included a subdivision design guide which referred to maintaining a single and central access to the Coastal Highway from each sub unit. The provision of access via a different road was inconsistent with the TRMP
- a planned by-pass road development included the intersection of the paper road at its farthest end and this indicated a potential future use
- the increased traffic resulting from the subdivision would mean the paper road would be well used if developed
- the court was not satisfied the council had adequately considered the strategic
- development of the area's roading network.

The court stated:

"We are not convinced that the closure of the road is needed for the development of the Carter Holt subdivision nor indeed that that is a valid reason for closing the road. Nor do we consider the retention of the unformed legal road is an improper use of the land. The key issue to be considered by the court on a road closure application is the need for the road for public use, or more specifically in this case whether or not the paper road could be used to provide

feasible and practicable access in the future and should therefore retain its status as a road.”

Central Otago District Council

Environment Court decision⁷¹

The issue

The council proposed in a response to a request from Moutere Station to stop three sections of unformed legal road which traverse Moutere Station some 15 kilometres north of Alexandra in the Central Otago District. The council considered that the road was no longer necessary as part of the council’s roading network now or in the future.

Council’s submission

The council argued:

- that the road is not required as part of its roading network now or in the future;
- there was no history of use of the road for 30 years;
- the stopping would not deny anyone access to their property;
- the stopping would help rationalise the number of roads in its network taking into account new roads to be formed;
- there were pressures on the council’s roading budget;
- the road was unlikely to meet the council’s criteria for road formation;
- the road was not necessary for recreation; and
- any recreational value would be more than offset by a counterbalancing proposal for access to a landscape feature called leaning rock.

Objector’s case

The Central Otago Recreational Users’ Forum (CORFU) objected on the basis that within the foreseeable future the road will form part of a valuable recreational link for cyclists and various categories of pedestrian user.

CORFU originally objected to the stopping of all three sections, but apparently as a result of procedural confusion it withdrew its objection to two of the sections.

CORFU submitted that:

- the road had high potential for both walking and cycling use;
- that it would be a link in a valuable loop route;
- the proposed access to leaning rock was not a relevant substitute;

⁷¹ No. [2010] NZEnvC 364

A witness claimed that use of the road would disrupt the management of Moutere Station and pose a biosecurity risk.

The Court

The Court noted that:

- it was clear that if the road was retained it would be used for recreational purposes; indeed the prospective use of the road was one reason advanced by Moutere Station for its stopping;
- the history of non-use was likely have been influence by it being blocked by a deer gate, which may or may not have been locked, surrounded by deer fencing;
- in its unformed state the road would not impose a significant cost on the council;
- the leaning rock proposal, while valuable in itself, was not a substitute for the route facilitated by the road. Whether or not it was a lawful consideration in considering the stopping, the compensation it might provide was not appropriate in this case.

The Court rejected as relevant what were essentially private benefits argued by Moutere Station.

Outcome

The Court concluded that the public benefit afforded into the future by retaining the road as part of the public road network exceeded significantly any public cost in doing so. It therefore reversed the decision of the council to stop the road.

Westland District Council

Environment Court Decision⁷²

The issue

The council proposed to stop parts of an unformed road located between the foreshore and properties located along Beach Street Hokitika. The area had in effect been incorporated into the beach Street properties to be used as garden, with building being located within or encroaching onto the road. In two cases dwellings had been located entirely within the road. The council proposed to subdivide the land subject to the stopping and sell or lease parts of it to the adjoining landowners, while locating a right of way for access on the foredune.

The Court

In considering the case for stopping the court noted that the predicted instability of the coastal foredune on which the road was located was realised during the hearing, with sections falling away into the sea during the hearing.

⁷² No. [2013] NZEnvC 105

Following the giving of expert evidence the Court indicated that it would not confirm the extent of the road stopping but would consider a modified proposal where the extent of the road to be stopped was reduced. The court noted that in considering the area of the road to be stopped the council had given too much weight to the extent of the occupation of the road and did not consider, or give adequate weight to, the need for the road and in particular whether there was a present or continuing need for the road.

The Court then discovered that the Council had not followed the procedure for stopping roads in the 10th Schedule of the Local Government Act 1974 in several material respects, and it had therefore no option, in the face of the objections, but to reverse the Council's decision.

Outcome

The Court found that:

“The District Council's breaches are fundamental and in the circumstances the court has no option but to reverse the decision of the District Council and allow the objections pursuant to clause 6 of the Tenth Schedule.”

Buller District Council

Environment Court 10 August 2015

The issue

The Buller District Council (the Council) proposed to stop part of an unformed road adjacent to State Highway 6 southwest of the Fox River Bridge on the West Coast between Greymouth.

The site was described as a small contained "settlement" on which is located six of the baches and associated outbuildings. Pedestrian access to the beach is available to the east of one of the baches, through a break in coastal vegetation. Area 3 contains two baches. This area adjoins an historic reserve managed by the Department of Conservation ("DOC") on which is situated Te Ana Matuku Cave. Access to the beach in this area, and to the cave, is between the baches and a large bush covered rock to the east.

Council's submission

The Council proposed to stop this road in order to "regularise a situation with respect to the baches that have occupied this area for approximately 80 years."

The council gave evidence suggesting that the area of road to be stopped was not required to remain as road and that the access needs of the public would not be adversely affected by the proposal. It was the Council's case that the proposal retained a significant amount of

road reserve, provided a right of way access easement through the middle of the site, and adjoined an historic reserve which also offered access to the beach and surrounding areas.

The Council further maintained that the road stopping proposal was not contrary to the NZCPS, that it took into account the future effects of sea level rise, and that the proposed right of way easement through the middle of the site would provide "good access into the future."

Objector's case

The principal concerns were that the road stopping would impede public access to the coast, valued for its exceptionally high landscape, recreational, historical and cultural values, and that the balance of the road reserve (the area not to be stopped) is located below the mean high water springs and would not provide access to the coast at certain times of the tide.

There was also concern that the proposal would result in a loss of potential car parking areas. If the road was partially stopped as proposed cars would have to park across the other side of the Fox River and approach the site by a convoluted route from there, or across the State Highway road bridge which lacks footpaths.

The Court

The Court referred to the principles applied in considering road stopping applications in *Re Ruapehu District Council*⁷³ and are relevant to this application.

They can be summarised as:

- The Court must be satisfied that there is reasonable cause to justify the Council's proposal;
- The Court must consider the merits of the proposal for the road itself and judge whether the public benefit gained by the proposed stopping is outweighed by the private injury which would follow from the proposal;
- The issue of access (pedestrian or vehicular) is a consideration;
- The central issue is the need for the road for public use - not the need for the stopping;
- The Court's power is to confirm reverse or modify the Council's decision to stop a road, not to declare that the stopped road be put to a particular purpose.

Whether there is a public need for the road requires consideration not just of the present use but also of likely future uses. In *Re Ruapehu District Council* the Court noted that:

"The public need is a question of fact which includes a consideration of:

- *The present and future uses;*

⁷³ Environment Court 2002 *Decision A083/02 ELRNZ. Reference 8 ELERNZ 144*

- *Whether those uses are such that one would reasonably expect the public to use the particular road; and*
- *The degree of community involvement.”*

Furthermore:

"the Court's general approach is that road stoppings might be favourably considered if the road in question is not used by the public for access purposes and is not reasonably likely to be used for such purposes in the future."

Pedestrian access on roads is a relevant issue in deciding whether a particular road might be stopped, including for purposes of angling, camping, swimming, hiking, tramping, cycling and other activities.

Outcome

The Court reversed the decision of the Council concluding that:

"...there is a need for public access to, over and along the unformed road, in particular for the purposes of pedestrian access to and along the adjacent stretch of coastline. While currently there might not be a high level of usage of the unformed road by members of the public, that is very likely a reflection of the site having been developed having every appearance of being private property. Greater public use would undoubtedly flow from the area attaining a more open and welcoming appearance, and with the establishment of appropriate signs. (Recognising however that it is not within the Court's power to order those things)."

and noting that:

*"...we hear the concerns of the Council and the bach holders and the reasons advanced for wanting to stop the road and dispose of the land, however as was held by the Court in the **Ruapehu** decision, the central issue is the need for the road for public use, not any perceived "need" for the stopping."*

Appendix D

Gates and Cattlestops Order 1955

PURSUANT to subsection (4) of s 11 of the Public Works Amendment Act 1935, as set out in s 16 of the Public Works Amendment Act 1952, the Minister of Works hereby makes the following order.

Contents

Schedule Specifications

1. This order may be cited as the Gates and Cattlestops Order 1955.
2. For the purposes of the said subsection (4) of s 11 of the Public Works Amendment Act 1935, the specifications for gates and cattlestops across public roads shall be those prescribed in the Schedule hereto.

Schedule Specifications

1. In these specifications— Cattlestop means a device set in the formed portion of a public road consisting primarily of a number of rails or bars fixed horizontally over a pit in such a manner as to allow wheeled traffic to pass but as to form a barrier for livestock. Gate means a swing gate constructed in conjunction with a cattlestop to provide access for livestock.
2. Cattlestops and gates shall be constructed of reasonably permanent material having regard to the circumstances applicable and shall be designed in accordance with sound engineering principles.
3. Every cattlestop shall be capable of supporting with the wheels in any possible position not less than one and a quarter times the maximum axle weight specified by the Heavy Motor Vehicle Regulations 1950 for the class of road on which the cattlestop is to be constructed:
Provided that if the road is classified lower than class three the road shall be deemed to be class three:
Provided further that the aforesaid axle weight shall be considered as being distributed over not more than two transverse rails or bars.
4. The minimum width of any cattlestop which is available for traffic shall be 10 ft, but either the cattlestop or the gate alongside shall afford a width available for traffic of at least 12 ft.
5. The minimum length of the pit of any cattlestop measured along the centre line of the road shall be 7 ft.

6. The depth from the top of the rails or bars of any cattlestop to the bottom of the pit shall be not less than 1 ft 6 in.
7. The rails or bars of every cattlestop shall be securely fastened to prevent movement under traffic and shall be at right angles to the general direction of travel of traffic.
8. Openings adjacent to the running surface between rectangular bars or railway rails of any cattlestop shall be not less than 4 1/2 in nor more than 6 in. Spacing of pipes or chamfered rails of any cattlestop shall be not less than 6 in nor more than 7 in centre to centre.
9. The thickness of any earth retaining wall around the pit of any cattlestop, and of any wall supporting rails or bars of any cattlestop, shall be not less than 6 in.
10. Cattlestops shall have side fences effective to prevent the passage of livestock extending their full length.
11. A cattlestop shall be located so that it is clearly visible for a distance of at least 5 chains on both approaches.
12. The top of the part of any cattlestop carrying traffic shall be so built that it forms a continuation of the surface of the adjacent road.
13. At least one gate not less than 10 ft wide, of adequate design and construction with adequate hinges and fastenings, shall be constructed in conjunction with every cattlestop. No gate shall have timber members of less than the following widths and thicknesses:

	New Zealand Timber	Australian Hardwood
Rails	4 in x 1 1/2 in.	3 1/2 in x 1 in.
Stiles	4 in x 1 in double	3 in x 1 in double
Diagonals	4 in x 1 in double	3 in x 1 in double

14. All members of gates shall be securely bolted together with metal bolts of not less than 1/2 in diameter.

Appendix E

Health and safety responsibilities of farmers to recreational visitors

Frequently Asked Questions

The Commission's FAQ is [here](#)

Worksafe's fact sheet is [here](#)

Visitors and events on farms

This fact sheet provides examples of the duties that farmers, who are 'persons conducting a business or undertaking' (PCBUs), have for events and visitors on their farms under the Health and Safety at Work Act 2015 (HSWA).

Key points

- Farmers are not responsible for the safety of people crossing a farm in non-work areas and away from farm buildings.
- Having a charge in place for attending an event on the farm does not change duties relating to health and safety.
- The farmhouse is not considered a workplace under the law.

What duties do farmers owe visitors on the farm?

- Farmers must ensure that work areas on the farm are safe, and don't pose a risk to the health and safety of any person.
- Farmers must also ensure that farm buildings and immediate surrounding areas are safe for any person, including visitors. All entrances, exits and anything arising from the buildings, must not put visitors' health and safety at risk.

Farmers are not responsible for the safety of people crossing a farm in non-work areas and away from farm buildings. However, they must ensure that work carried out as part of the business (at any location on the farm), doesn't put others at risk. If risks exist from work previously carried out (e.g. spraying of hazardous substances), then the farmer would need to reasonably manage these risks for visitors.

People visiting a farm have a responsibility to take reasonable care that their actions (or lack of action) do not put themselves or others at risk. They must also comply with any reasonable instruction given by the farmer, as far as they're able to.

Appendix F

Schedule 10 Local Government Act 1974

Conditions as to stopping of roads and the temporary prohibition of traffic on roads.

Schedules 10, 11, 12 and 13 were inserted as from April 1979, by s 3(1) of the Local Government Amendment Act 1978.

Stopping of Roads

1. The council shall prepare a plan of the road proposed to be stopped, together with an explanation as to [[why the road is to be stopped and]] the purpose or purposes to which the stopped road will be put, and a survey made and a plan prepared of any new road proposed to be made in lieu thereof, showing the lands through which it is proposed to pass, and the owners and occupiers of those lands so far as known, and shall lodge the plan in the office of the Chief Surveyor of the land district in which the road is situated.⁷⁴ [[The plan shall separately show any area of esplanade reserve which will become vested in the council under s 345 (3) of this Act.]]
2. On receipt of the Chief Surveyor's notice of approval and plan number the council shall open the plan of public inspection at the office of the council, and the council shall at least twice, at intervals of not less than 7 days, give public notice of the proposals and of the place where the plan may be inspected, and shall in the notice call upon persons objecting to the proposals to lodge their objections in writing at the office of the council on or before a date to be specified in the notice, being not earlier than 40 days after the date of the first publication thereof. The council shall also forthwith after that first publication serve a notice in the same form on the occupiers of all land adjoining the road proposed to be stopped or any new road proposed to be made in lieu thereof, and, in the case of any such land of which the occupier is not also the owner, on the owner of the land also, so far as they can be ascertained.
3. A notice of the proposed stoppage shall during the period between the first publication of the notice and the expiration of the last day for lodging objections as aforesaid be kept fixed in a conspicuous place at each end of the road proposed to be stopped:

Provided that the council shall not be deemed to have failed to comply with the provisions of this clause in any case where any such notice is removed without the authority of the council, but in any such case the council shall, as soon as conveniently may be after being informed of the unauthorised removal of the notice, cause a new notice complying with the

⁷⁴ The words in both sets of double square brackets were inserted by s.362 of the Resource Management Act 1991

provisions of this clause to be affixed in place of the notice so removed and provisions of this clause to be affixed in place of the notice so removed and to be kept so affixed for the period aforesaid.

4. If no objections are received within the time limited as aforesaid, the council may by public notice declare that the road is stopped; and the road shall, subject to the council's compliance with clause 9 of this Schedule, thereafter cease to be a road.
5. If objections are received as aforesaid, the council shall, after the expiration of the period within which an objection must be lodged, unless it decides to allow the objections, send the objections together with the plans aforesaid, and a full description of the proposed alterations to the [[Environment Court]].
6. The [Environment Court] shall consider the district plan, the plan of the road proposed to be stopped, the council's explanation under clause 1 of this Schedule, and any objection made thereto by any person, and confirm, modify, or reverse the decision of the council which shall be final and conclusive on all questions.]]

[This clause was substituted for the former clause 6 by s 362 of the Resource Management Act 1991.]

7. If the [[Environment Court]] reverses the decision of the council, no proceedings shall be entertained by the [[Environment Court]] for stopping the road for 2 years thereafter.
8. If the [[Environment Court]] confirms the decision of the council, the council may declare by public notice that the road is stopped; and the road shall, subject to the council's compliance with clause 9 of this Schedule, thereafter cease to be a road.
9. Two copies of that notice and of the plans hereinbefore referred to shall be transmitted by the council for record in the office of the Chief Surveyor of the land district in which the road is situated, and no notice of the stoppage of the road shall take effect until that record is made.
10. The Chief Surveyor shall allocate a new description of the land comprising the stopped road, and shall forward to the District Land Registrar or the Registrar of Deeds, as the case may require, a copy of that description and a copy of the notice and the plans transmitted to him by the council, and the Registrar shall amend his records accordingly.
11. The council may, subject to such conditions as it thinks fit (including the imposition of a reasonable bond), and after consultation with the Police and the Ministry of Transport, close any road or part of a road to all traffic or any specified type of traffic (including pedestrian traffic) –

- (a) While the road, or any drain water race, pipe, or apparatus under, upon, or over the road is being constructed or repaired; or
- (b) Where, in order to resolve problems associated with traffic operations on a road network, experimental diversions of traffic are required; or
- (c) During a period when public disorder exists or is anticipated; or
- (d) When for any reason it is considered desirable that traffic should be temporarily diverted to other roads; or
- (e) For a period or periods not exceeding in the aggregate 31 days in any year for any exhibition, fair, show market, concert, film-making, race or other sporting event, or public function:

Provided that no road may be closed for any purpose specified in paragraph (e) of this clause if that closure would, in the opinion of the council, be likely to impede traffic unreasonably.

11.A The council shall give public notice of its intention to consider closing any road or part of a road under clause 11(e) of the Schedule: and shall give public notice of any decision to close any road or part of a road under that provision.

11.B Where any road or part of a road is closed under clause 11(e) of this Schedule, the council or, with the consent of the council, the promoter of any activity for the purpose of which the road has been closed may impose charges for the entry of persons and vehicles to the area of closed road, any structure erected on the road, or any structure or area under the control of the council or the promoter on adjoining land. [[11C. Where any road or part of a road is closed under clause 11 (e) of this Schedule, the road or part of a road shall be deemed for the purposes of –

- (a) The Transport Act 1962 and any bylaws made under s 72 of that Act:
- (b) The Traffic Regulations 1976:
- (c) The Transport (Drivers Licensing) Regulations 1985:
- (d) The Transport (Vehicle and Driver Registration and Licensing) Act 1986:
- (e) The Transport Vehicle Registration and Licensing) Notice 1986:

[(ea) The Land Transport Act 1998:]

- (f) Any enactment made in substitution for any enactment referred to in [paragraphs (a) to (ea)] of this clause— not to be a road; but nothing in this clause shall affect the status of the road or part of a road as a public place for the purposes of this or any other enactment.]] [Clauses 11, and 11A to 11C, were substituted for this former clause 11 (as enacted by s 3 (1) of the Local Government Amendment Act 1978) by s 14 (1) of the Local Government Amendment act (No.3) 1986.

[In clause 11C, para. (ea) was inserted from 1 March 1999 by s 215 (1) of the Land Transport Act 1998.

[In Clause 11C the words “paragraphs (a) to (ea)” were substituted for the words “paragraphs (a) to (e)” from 1 March 1999 by s 215 (1) of the Land Transport Act 1998.]

12. The powers conferred on the council by clause 11 (except paragraph (e)) may be exercised by the Chairman on behalf of the council or by any officer of the council authorised by the council in that behalf.
13. Where it appears to the council that owing to climatic conditions the use of any road in a rural area, other than a State highway or Government road, not being a road generally used by motor vehicles for business or commercial purposes or for the purpose of any public work, may cause damage to the road, the council may by resolution prohibit, either conditionally or absolutely, the use of that road by motor vehicles or by any specified class of motor vehicle for such period as the council considers necessary.
14. Where a road is closed under clause 13 of this Schedule, an appropriate notice shall be posted at every entry to the road affected, and shall also be published in a newspaper circulating in the district.
15. A copy of every resolution made under clause 13 of this Schedule shall, within 1 week after the making thereof, be sent to the Minister of Transport, who may at any time, by notice 64 Appendix D to the council, disallow the resolution, in whole or in part, and thereupon the resolution, to the extent that it has been disallowed, shall be deemed to have been revoked.
16. No person shall—
 - (a) Use a vehicle, or permit a vehicle to be used, on any road which is for the time being closed for such vehicles pursuant to clause 11 of this Schedule; or [[(aa) Without the consent of the council or the promoter of any activity permitted by the council, enter or attempt to enter, or be present, on any road or part of a road that is for the time being closed to pedestrian traffic pursuant to clause 11 of this Schedule; or]]
 - (b) Use a motor vehicle, or permit a motor vehicle to be used, on any road where its use has for the time being been prohibited by a resolution under clause 13 of this Schedule.

[Para. (aa) was inserted by s 14 (2) of the Local Government Amendment Act (no. 3) 1986.]

Appendix G

LINZ standard for stopping or resumption of road (LINZS15002)

URL <https://www.linz.govt.nz/regulatory/15002>

Terms and definitions

For the purposes of this standard, the following terms and definitions apply.

Computer register: As defined in s 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 and created by the Registrar-General of Land under s 7 to s 14 of that Act; formerly known as certificate of title.

Council: As defined in s 2 of the LGA. This has the same meaning as 'local authority'.

Gazette: The New Zealand Gazette - Te Kahiti o Aotearoa, the official newspaper of the Government of New Zealand Government

LGA: Local Government Act 1974

LINZ: Land Information New Zealand

Local authority: A regional council or territorial authority. Definition from s 5(1) of the Local Government Act 2002. Has the same meaning as 'council'.

Minister: Minister of Lands referred to in s 4A of the PWA. The statutory responsibilities of the Minister of Lands are held by the Minister for Land Information.

Ngāti Mutunga Protocol: Land Information New Zealand Protocol with Ngāti Mutunga, entered into under the Ngāti Mutunga Treaty settlement

Ngāti Tama Protocol: Land Information New Zealand Protocol with Ngāti Tama, entered into under the Ngāti Tama Treaty settlement

Principal Administrative Officer: As defined in s2 of the LGA

PWA: Public Works Act 1981

Road: As defined in s 315 of the LGA and s 43(1) of the Government Roding Powers Act 1989, and includes part of a road

Rural area: As defined in s 2 of the LGA

Territorial authority: A city council or a district council named in Part 2 of Schedule 2 of the Local Government Act 2002. Definition from s 5(1) of the Local Government Act 2002.

Foreword

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Introduction

(a) The PWA and the LGA set out procedures for stopping and resuming of land that has the status of road. The Crown must use the provisions of the PWA to stop roads. Local councils may use the LGA or request the Minister use the PWA to stop roads.

(b) Consultation with either Ngāti Mutunga and/or Ngāti Tama will be required if there is a proposal to resume an unformed road that is situated in areas covered by the respective protocols entered into between the Crown and those respective iwi.

(c) Disposal of land that is stopped road must be carried out in accordance with the relevant statutory provisions in the PWA or the LGA.

(d) Disposal of land that is resumed road must be carried out in accordance with the relevant statutory provisions in the Land Act 1948.

Purpose of standard

The purpose of this standard is to ensure that the Minister for Land Information's role in road stopping or resumption is correctly carried out and that the protocols the Crown has with Ngāti Mutunga and Ngāti Tama are followed when road is proposed to be resumed.

Superseded documents

This standard supersedes the following documents:

- *LINZ 2004, Legalisation: Accredited Supplier Standard 16*, (as amended), Property Regulatory Group, LINZ, Wellington
- *LINZ 2005, Disposal of Land: Accredited Supplier Standard 3*, Property Regulatory Group, LINZ, Wellington
- Clause 33.6 of LINZ 2005, *LINZS2001: Guidelines to the Standard for the Acquisition of Land under the Public Works Act 1981*, Property Regulatory Group, LINZ, Wellington
- LINZ 2008, *LINZS45001: Amendment to Accredited Supplier Standard 16 – Legalisation (Ngāti Tama and Ngāti Mutunga Settlement)*, Property Regulatory Group, LINZ, Wellington

References

The following documents are necessary for the application of this standard.

- Government Roading Powers Act 1989
- Land Act 1948
- Local Government Act 1974
- Ngāti Mutunga Deed of Settlement
- Ngāti Tama Deed of Settlement
- Public Works Act 1981

For the full text of a Deed of Settlement under the Treaty of Waitangi, contact the Office of Treaty Settlements.

1 Scope

- (a) This standard sets out the procedures to be followed and provides guidance for:
- (i) the stopping of road under the PWA and the LGA,
 - (ii) the resumption of unformed road by the Crown from territorial authorities, and
 - (iii) the resumption of unformed road in the Ngāti Tama and Ngāti Mutunga protocol areas.
- (b) A local authority is responsible for complying with all requirements of Schedule 10 of the LGA, including public notice. This standard does not cover those requirements.

2 Intended use of standard

- (a) A local authority, the New Zealand Transport Agency, and any Government agency or their contractor must use this standard when seeking a decision from the Minister or Land Information New Zealand (LINZ) on the stopping and resuming of road.
- (b) All applications under this standard must be made to LINZ, as LINZ acts on delegated authority from the Minister.

3 Road stopping

3.1 Introduction

The provisions for stopping road under the PWA and the LGA are as follows:

- (a) The Minister may declare any road to be stopped under s 116 of the PWA.
- (b) A council may stop any road under s 342 of the LGA but may not proceed to stop any road in a rural area without the prior consent of the Minister.

Guidance on mechanisms for stopping roads

Formed and unformed roads

The road stopping provisions under s 116 of the PWA and s 342 of the LGA apply to land which has the status of road, regardless of whether the road is formed or unformed

Public Works Act 1981

Legislation – Section 116 of the PWA provides for the stopping of a road.

When to use – Section 116 of the PWA is used when the NZ Transport Agency or another government agency proposes to stop a government road. A local authority may make application to the Minister to stop a road under s 116 of the PWA. The decision whether to stop a road under s116 of the PWA is for the Minister.

Justification – Where a local authority makes application to the Minister to use s 116 of the PWA to stop a road it is to provide the Minister with reasons why it considers use of s 116 of the PWA is more appropriate than s 342 of the LGA.

Local Government Act 1974

Legislation – Sections 319 and 342, and Schedule 10 of the LGA. Section 342 of the LGA provides for the stopping of road.

When to use – LINZ prefers that, in the first instance, local authorities apply the procedures in s 342 of the LGA, given the requirements for public notification. Road should be stopped using the LGA when there are likely to be objections to the proposal, or matters of public access to consider

3.2 Road stopping under the Public Works Act 1981

When applying to the Minister to declare a road to be stopped under s 116 of the PWA, the application must include the following:

- (a) a report with a full description of the road to be stopped, and advice on the following matters, where applicable:
 - (i) whether the road to be stopped is a road, service lane, or access way,
 - (ii) public use of the road,
 - (iii) public use of any land severed by the road,
 - (iv) reasons for stopping the road,
 - and
 - (v) proposals for the land following the road stopping;
- (b) a copy of the approved survey plan,

- (c) a plan or plans showing:
 - (i) the boundaries of the road that is proposed to be stopped,
 - (ii) topographic information for the road and adjoining land, and
 - (iii) the wider area showing the road that is proposed to be stopped and any alternative legal and practicable access to adjoining land;
- (d) evidence that adequate legal and practicable access to land adjoining the road is left or provided,
- (e) evidence that notice has been given under s116(2)(a) of the PWA,
- (f) a copy of any consent required under s 16(2) of the PWA,
- (g) the draft Gazette notice for execution, and
- (h) copies of the relevant computer registers.

Guidance on consents to stopping under the Public Works Act 1981

Legislation – s 116 of the PWA sets out the notice, situation, and consent requirements which must be met before the Minister may declare a road to be stopped.

Consent of adjoining owner – Under s 116(2)(b)(i) of the PWA, the consent of the adjoining owner is not required when adequate road access is left or provided. Adequate access should include both legal and practicable access to the adjoining land. It may be prudent to obtain consent as it provides evidence that the adjoining owner has agreed to any exchange.

Form of consent – The consent of a local authority under s 116(2)(d) of the PWA should be signed by the principal administrative officer. Some local councils use a resolution under seal.

Guidance on road disposal under the Public Works Act 1981

Legislation – The key provisions relating to disposal of stopped roads are set out in Part 8 of the PWA.

Agreements for sale and purchase – Agreements for sale of land that is stopped road under s 117 of the PWA should not be entered into before the Minister's approval under s 116 of the PWA, unless the agreement is made subject to that statutory approval being obtained.

3.3 Stopping of road in a rural area under the Local Government Act 1974

Where consent from the Minister is required to stop any road in a rural area under s 342 of the LGA the application must include the following:

- (a) a full description of the road,

- (b) a report with advice on:
 - (i) whether the road to be stopped is a road, service lane, or access way,
 - (ii) public use of the road,
 - (iii) public use of any land severed by the road,
 - (iv) reasons for stopping the road, and
 - (v) proposals for the land following the stopping;
- (c) a copy of:
 - (i) the approved survey plan referred to in clause 2 of Schedule 10 of the LGA,
or
 - (ii) a plan which shows the proposed road stopping if a survey is yet to be completed;
- (d) a plan or plans showing:
 - (i) the boundaries of the road that is proposed to be stopped,
 - (ii) topographic information for the road and adjoining land, and
 - (iii) the wider area showing the road that is proposed to be stopped and any alternative legal and practicable access to adjoining land;
- (e) evidence that adequate legal and practicable access to land adjoining the road is left or provided,
- (f) a letter from the council requesting consent to the stopping, and
- (g) a draft consent notice for execution. This notice must contain the following:
 - (i) the name of the road,
 - (ii) the name of the territorial authority district,
 - (iii) the name of the land registration district the land is located in,
 - (iv) a description of the road, including:
 - A. land area, in hectares,
 - B. the lot and deposited plan numbers of any land the road adjoins or passes through,
 - (v) space for a date and signature, and
 - (vi) a file reference.

Guidance on stopping of road in a rural area under the Local Government Act 1974

Legislation – Sections 319(h) and 342 of the LGA provide for a local authority to stop any road, in the manner provided in Schedule 10 to that Act.

Minister's consent required – If a road is in a rural area, the local authority must obtain prior consent of the Minister of Lands under s 342(1)(a) of the LGA before proceeding to stop that road.

The Minister's consent should be obtained before public notice of the proposed road stopping is given under clause 2 of Schedule 10 of the LGA.

The local authority is responsible for complying with all requirements of Schedule 10 of the LGA, including public notice.

Updating of cadastre – Noted that under clause 9 of Schedule 10 of the LGA a road stopping does not take effect until LINZ makes a record in the cadastre following notification by the local authority.

4 Right of resumption for unformed roads

4.1 Introduction

The Chief Executive of LINZ has the delegated authority of the Minister of Land Information to issue a notice under s 323 of the LGA.

4.2 Application to Land Information New Zealand

Where it is proposed to transfer to the Crown, under s 323 of the LGA, any land that comprises an unformed road, the application to LINZ requesting the issue of a notice requiring that transfer must include:

- (a) a plan showing the location and area of the unformed road,
- (b) an explanation of the reason for the application to resume the road,
- (c) details of any alternative access to adjoining land that is intended to be provided,
- (d) whether the road stopping will deny or restrict access to other areas, including bush, river, or sea,
- (e) details of the intended recipient of the land once the land has been resumed by the Crown and is disposed of,
- (f) evidence of discussions with the council, and its response,
- (g) comment on the current use of the unformed road,
- (h) evidence of discussions with adjoining landowners,
- (i) confirmation that the LINZ protocols with Ngāti Mutunga and Ngāti Tama have been considered, and complied with if applicable,
- (j) details of any other matter that may be of consequence to the proposal, and
- (k) the draft Gazette notice for execution.

Guidance on dealing with resumed roads

Legislation – The Land Act 1948 sets out the key provisions relating to the alienation of Crown land.

Resumed road becomes Crown land – Where the Minister requires the resumption of a road under s 323 of the LGA, the land ceases to be a road and shall be deemed to be Crown land subject to the Land Act 1948. Alienation of any such land will be under the relevant statutory provisions of the Land Act 1948.

4.3 Ngāti Mutunga Protocol

- (a) Where the resumption of unformed road is proposed within the LINZ Protocol Area, depicted in Appendix A, the Ngāti Mutunga Governance Entity must be consulted with in terms of the principles set out in the Ngāti Mutunga Protocol.
- (b) The Ngāti Mutunga Governance Entity must be provided with the information set out in subsection 4.2 above, and their views on the proposal sought, ensuring that the information requirements set out in the Ngāti Mutunga Protocol are met.
- (c) The unformed road must not be resumed unless LINZ is satisfied that the Ngāti Mutunga Governance Entity has been consulted.
- (d) Any submission on the proposal provided by Ngāti Mutunga must be submitted to LINZ with the application to transfer the land under s 323 of the LGA, and the information in 4.2.

4.4 Ngāti Tama Protocol

- (a) Where the resumption of unformed road is proposed within the LINZ Protocol Area, depicted in Appendix B, the Ngāti Tama Governance Entity must be consulted with in terms of the principles set out in the Ngāti Tama Protocol.
- (b) The Ngāti Tama Governance Entity must be provided with the information set out in 4.2, and their views on the proposal sought, ensuring that the information requirements set out in the Ngāti Tama Protocol are met.
- (c) The unformed road must not be resumed unless LINZ is satisfied that the Ngāti Tama Governance Entity has been consulted.
- (d) Any submission on the proposal provided by Ngāti Tama must be submitted to LINZ with the application to transfer the land under s 323 of the LGA, and the information in 4.2.

Refer to the Ngāti Mutunga Deed of Settlement or the LINZ website for the full text of the LINZ Protocol with Ngāti Mutunga.

Refer to the Ngāti Tama Deed of Settlement for the full text of the LINZ Protocol with Ngāti Tama.