
Public Roads

A Guide to Rights of Access to the Countryside

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PUBLIC LANDS COALITION

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Land Appellation and the Location of Access, published by the NZ Deerstalkers' Association in 1972 was drawn on for part of section C.

Cover Photo: Historic bridle tracks provide valuable walking opportunities on the Otago Peninsula. This 'green' public road was developed by a local walking group. *B Mason.*

Introduction

The purpose of this guide is to provide an introduction to public rights of use, and avenues for affirming these rights, primarily over unformed public roads.

New Zealand is fortunate that since the time of the signing of the Treaty of Waitangi in 1840, the subdivision and settlement of most Crown lands sold to private ownership has seen a generous provision of public roads.

Our colonial administrators had both the experience of other British colonies behind them, and the foresight to require that when any Crown lands were sold every 'allotment' had at least one frontage on to a legal, public road. On Queen Victoria's instructions they were also required to retain in Crown ownership a one chain (20 metre) wide strip of land along the shores of the sea, lakes and major rivers—the 'Queen's Chain'. Very often these strips were reserved as public roads. In many cases roads were never intended for motor vehicles—such use only being a consideration since the turn of the century.

Approximately half of all roads have been upgraded into carriageways suitable for motor vehicles, the other half remain unformed or only partly formed, being most suitable for pedestrians or for horse traffic.

Roads provide the main, and in many places, the only means of guaranteed public access through rural New Zealand. The greater bulk of our waterways, public reserves and other community areas are only accessible from public roads. Without these roads most New Zealanders would be alienated from much of the countryside.

There are insignificant established rights of customary public access across private lands, unlike in Britain and Europe. There is no tradition here, supported by common law, of 'wander-at-will' like Sweden's 'allemansrätt' or 'Right of Common Access', or centuries-old rights of way as in Britain. In New Zealand a limited number of public rights-of-way over private land do exist. These however are not the focus of this guide.

The legacy of our 150 years of European settlement is recorded on official survey plans and other cadastral maps. The legal boundaries of every allotment are recorded, along with the location of public roads. This provides an accessible public record of the existence of such roads, and along with common law as modified by statute law, an assurance of public rights of access. Public usage of course depends on adequate physical definition on the ground so as to avoid the risk of committing the criminal offence of trespass on adjoining private land.

New Zealand has among the harshest trespass laws in the world. It is therefore particularly important that public rights of way, such as roads are legally secure, are identifiable on the ground, and used by the public so as to ensure their continued availability.

There is the ever-present possibility or reality of adjoining landowner encroachment and obstruction, and central or local government moves towards

privatisation of public assets including 'unwanted' roads.

The principal of free, unhindered passage along public roads has been well established through the courts. Private individuals cannot lawfully obstruct these public ways without liability. Direct removal of obstructions or legal action against those who do obstruct public use are available remedies. Local authorities who generally administer road reserves are constrained as to their powers to close or 'stop' them. Our common law, as continually refined through test cases before the courts, has championed the public's rights ahead of attempts at 'annexation' by private interests or from negligence by the local authorities who administer public roads.

However the present legal security of public use could all change as a result of amendments to the laws under which public roads are administered, in large part effected by a massive review of resource management legislation.

Based on an ideology that local communities know what is best for themselves and that central government has no legitimate role in setting prescriptive standards for the protection of existing public rights, the Resource Management Bill sets about devolving to district councils most of Government's role as final consentor. The future administration of public roads has been entangled with massive changes to soil, water, land and water use, and town and country planning matters, in addition to changes in roading administration.

The proposed resource management legislation provides for relatively easy disposal by district councils of road reserves along shorelines (the 'Queen's chain'). Fortunately the last government backed off from proposed changes that would have allowed the issuing to private individuals of leases over roads, carrying with them trespass rights and the power to exclude all other persons.

The only checks on disposal powers will be provided by public pressure on local body politicians, and provisions in district schemes (plans), the latter being subject to regular review. If there are unfavourable or no protections in district plans there can be no assurance that existing rights of public use, or even the existence of many public roads particularly of the unformed variety, will be carried forward to the future.

Hopefully this brief guide will provide readers with sufficient confidence to apply the information provided, as well as to use and enjoy our roading heritage.

Except for much of the 'Common Law' excerpts in section A to which the Copyright Act 1962 applies, you are welcome to reproduce the balance of this guide in whole or in part. However acknowledgement of the title, author and publisher would be appreciated. See 'Acknowledgements' on the inside cover.

A. Your legal rights

This section is a summary of relevant common law and excerpts of statute law that directly affect the recreational user. It does not attempt to provide a complete coverage of all legal matters relating to public roads.

What follows is intended as a convenient first reference and introduction to roading law. *McVeagh's Local Government Law in New Zealand* is recommended for a more complete picture, particularly if legal arguments are contemplated. It is also continually updated with changes in the law.

Common law is founded on a body of underlying principles or presumptions, and also provides guiding interpretations of the statutes. Enactments do not represent a self-sufficient code—they only modify the common law derived since medieval times from the English courts, and latterly the New Zealand courts. The common law quoted consists largely of case notes or summaries of judicial decisions; the full decisions can be readily inspected at law libraries.

Part XXI of the Local Government Act 1974 (reprinted 1988) sets out the main rules for the use, closure, and 'stopping' (revocation and disposal) of road reserves under the control of local authorities. The main provisions in this and other Acts affecting local roads follow.

Government purpose roads, such as motorways and state highways, are subject to the Public Works Act 1981 and the Transit New Zealand Act 1989. Similar provisions to the Local Government Act apply but are not covered in this guide. The Crown Grants Act 1908 may need to be consulted if dispute over the status of roads dedicated by Crown grant arise.

If you have doubts as to the status of a particular road you should consult a solicitor.

SOURCES

McVeagh's Local Government Law in New Zealand. Vol. V. Brooker & Friend, Wellington. 1984.

New Zealand Law Reports.

New Zealand Statutes.

REFERENCES

Butterworth's Annotations to the New Zealand Statutes. Second Edition. Butterworths, Wellington. 1989.

The Surveyor and the Law, J A McRae (Ed). NZ Institute of Surveyors. 1981: Chapter 8.

ABBREVIATIONS USED

AC	Appeal Cases (English Reports)
CA	Court of Appeal
D	Record of decision by Planning Tribunal, referring to page numbers
GLR	Gazette Law Reports
HC	High Court
NZLR	New Zealand Law Reports
NZPCC	New Zealand Privy Council Cases
NZTPA	New Zealand Town Planning Appeals
SC	Supreme Court

A.1 Definitions and dedications

“Section 2 Local Government Act 1974. Interpretation—(1) In this Act, unless the context otherwise requires—

“Formation”, in relation to any road, has the same meaning as the construction of the road, and includes gravelling, metalling, sealing, or permanent surfacing the road; and “form” has a corresponding meaning.

“Laying out”, in relation to any road, means the legal and survey actions necessary to enable the road to be formed; but does not include the formation of the road.

“Road” has the meaning defined in section 315 of this Act.

“Upgrading”, in relation to any road, includes any change to the composition, width, or surfacing of the road.

Other terms:

“Paper road”: A popular term but not found in the Local Government Act 1974. Also referred to as a “subdivisional road”. Commonly understood to mean ‘unformed’ however the Privy Council considered them to have a broader meaning of, being laid out by survey action but never fenced or ‘made up’ (formed), or actually used as a road by the general public. *Snushall v Kaikoura County [1923] NZPCC 670*.

“Public highway” is a form of road, along with a carriageway, bridle path, or footpath (Section 43 Transit New Zealand Act 1989).

“Unformed road”: Undefined in Local Government Act but used in section 323. In an appeal case it was held that a partly formed road cannot be held to be an unformed road, even though portions of the road outside of the vehicle way were in its virgin state. The formations consisted of (in part) constructed cuttings and embankments, and a graded, metalled vehicle way. *Jones v Lower Hutt City [1966] NZLR 879*. There is no legal distinction in rights of use between formed and unformed roads.

“Unformed”: Dictionary meaning (cited in above case)— “not formed or fashioned into a regular shape; formless”. 2 *Shorter Oxford Dictionary 2298*.

“Section 315 Local Government Act 1974. Interpretation—(1) In this Part of this Act, unless the context otherwise requires—

“Private road” means any roadway, place, or arcade laid out or formed within a district on private land, whether before or after the commencement of this Part of this Act, by the owner thereof, but intended for the use of the public generally.

“Private way” means any way or passage whatsoever over private land within a district, the right to use which is confined or intended to be confined to certain persons or classes of persons, and which is not thrown open or intended to be open to the use of the public generally; and includes any such way or passage as aforesaid which at the commencement of this Part of this Act exists within any district.

“Road” means the whole of any land which is within any district, and which—

- (a) Immediately before the commencement of this Part of this Act was a road or street or public highway; or
- (b) Immediately before the inclusion of any area in the district was a public highway within that area; or
- (c) Is laid out by the council as a road or street after the commencement of this Part of this Act; or
- (d) Is vested in the council for the purpose of a road as shown on a deposited survey plan; or
- (e) Is vested in the council as a road or street pursuant to any other enactment;— and includes—
- (f) Except where elsewhere provided in this part of this Act, any access way or service lane which before the commencement of this Part of this Act was under the control [or is laid out or constructed by or vested in any council as an access way or service lane] or is declared...by the Minister of Works and Development as an access way or service lane after the commencement of this Part of this Act or is declared by the Minister of Lands as an access way or service lane on or after the 1st day of April 1988;
- (g) Every square or place intended for use of the public generally, and every bridge, culvert, drain, ford, gate, building, or other thing belonging thereto or lying upon the line or within the limits thereof;— but except as provided in [Part XI of the Public Works Act 1981] or in any regulations under that Act, does not include a motorway within the meaning of that Act.”

COMMON LAW AND DEDICATION OF ROADS

The function of declaration and dedication of roads is to formalise public rights of passage and access. Under common law any titled land held in fee simple (freehold) can be dedicated as road. A dedication becomes effective when the public uses land so dedicated for that purpose.

Cf. Section 315(1) Paragraph (b) Local Government Act 1974: Many decisions under the equivalent provisions of earlier enactments as to whether a roadway was a highway at the time an area was included in the council’s district have concerned the question as to whether there had been an express or implied dedication of the land as a highway.

There is some doubt as to whether in view of the “indefeasibility”[†] provi-

sions of the Land Transfer Act 1952, a council may be precluded from acquiring roads in New Zealand by a process of implied dedication where land is registered under the Land Transfer Act. See *Webb v Blenheim Borough* [1975] 1 NZLR 57 (SC).

Land which is dedicated as a public highway at the time of its inclusion in the council's district will be a "road" for the purposes of the Act although its width is less than that permitted under the Act. *Smith v Melrose Borough* (1900) 2 GLR 330 (SC).

A landowner cannot dedicate a road which does not comply with the requirements of the Act with regard to road width. *Wellington City v A&T Burt Ltd* [1917] NZLR 659 (SC); *Carpet Import Co Ltd v Beath & Co Ltd* [1927] NZLR 37 (SC).

Land dedicated by a person legally competent to do so to the public for the purpose of passage becomes a highway when accepted for such purpose by the public. The question as to whether there has been a dedication and acceptance is a question of fact and not law. Before there can be a dedication, there must be "*animus dedicandi*"*. Such an intention may be openly expressed in words or evidence as to the acts and behaviour of the person concerned when viewed in light of all the surrounding circumstances. Acceptance by the public requires no formal act of adoption by any persons or authority and such acceptance may be inferred from public uses of the way in question. It is however necessary, even if dedication is established, to prove that the way has been thrown open to the public and used by them. *Several cases*.

A lessee or mortgagee cannot dedicate land as a highway without the concurrence of the lessor or mortgagor respectively. *Several cases*.

In considering the question of "*animus dedicandi*" it is necessary to consider how the use was initiated. If the use was commenced and continued under a licence which was revocable at any time, then there would be no "*animus dedicandi*".

Cf. Section 315(1) Paragraph (c) Local Government Act 1974: See section 316 (property in roads) and section 322 (land for road formation or widening).

Cf. Section 315(1) Paragraph (d) Local Government Act 1974: See section 306(3) (on deposit of an approved survey plan road vests in council).

*"*Indefeasibility*" of title. A convenient description of the concept of immunity from attack by adverse claim to land, or an interest in, which a registered proprietor enjoys. However a title under the Land Transfer Act 1952 is, strictly speaking, not secure against all claims (eg if a public road or reserve is incorrectly included in a certificate or title).

*"*Animus dedicandi*" means intention of setting apart for a particular purpose eg. expressly or implicitly opening to public use a road on private land and the public availing themselves of it. The effect of dedication is that the freehold of the road is transferred to the district council.

A.2 Rights of public to pass along a road

COMMON LAW

Subject to the express or implied statutory powers of a district council, the public has the absolute right at common law to pass and repass along a road without hindrance.

Judge Chilwell: "*I have come to the conclusion that a road is incapable of being possessed by anyone to the exclusion of the right of each and every member of the public to assert his right to pass and repass without hindrance over every part of it. This is no mere exercise in theory...*" (in relation to use of paper roads). *Moore v MacMillan* [1977] 2 NZLR 81 (SC); *Pratt & McKenzie's Law of Highways* (21st ed) p 53.

A permanent obstruction erected on a road without lawful authority and which renders the way less commodious than before to the public is a public nuisance, provided the obstruction constitutes an appreciable interference with the traffic in the road. *Lower Hutt City v A-G ex rel Moulder* [1977] 1 NZLR 184 (CA). ('Traffic' is used in all its forms).

In relation to rights of access by adjoining owners, the rights of the public to pass along a highway are subject to a frontager's right of access, just as the right of access is subject to the rights of the public, and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using a highway. *Marshall v Blackpool Corporation* [1935] AC 16.

A.3 Property on roads

COMMON LAW

Cf. Section 316 Local Government Act 1974. **Property in roads.**

All materials in a road vest in freehold title in district councils, subject to the rights enjoyed by both the public and adjoining land owners. *Lower Hutt City v A-G ex rel Moulder* [1977] 1 NZLR 184 (CA).

The fact that streets are vested in and under the control of a district council does not entitle the council to erect or authorise the erection of a structure in a road if that structure amounts to a public nuisance or interferes with individual rights. *R v Wellington City* (1896) 15 NZLR 72 (CA); *Lower Hutt City v A-G ex rel Moulder* [1977] 1 NZLR 184 (CA).

The council will be liable where it has permitted a private work to be constructed on the road and permits it to remain upon the road when it is aware through its officers that the work is in a dangerous condition. Liability in such circumstances does not depend upon the failure of the council to keep the road in repair but upon the fact that in its capacity as the authority having control of the road, it has allowed a person to create an obstruction as a kind of public nuisance. *Mayor, etc of Invercargill v Hazelmere* (1905) 25 NZLR 194 (SC).

A.4 Administrative powers over roads

STATUTE LAW

“Section 319 Local Government Act 1974. General powers of councils in respect of roads—The council shall have the power in respect of roads to do the following things:

- (a) To construct, upgrade, and repair all roads with such materials and in such manner as the council thinks fit:
- (c) To lay out new roads:
- (d) To divert or alter the course of any road:
- (e) To increase or diminish the width of any road subject to and in accordance with the provisions of the district scheme, if any, and to this Act and any other Act:
- (f) To determine which part of a road shall be a carriageway, and what part a footpath or cycle track only:
- (g) To alter the level of any road or any part of any road:
- (h) To stop or close any road or part thereof in the manner and upon the conditions set out in section 342 and the Tenth Schedule to this Act:
- (i) To make and use a temporary road upon any unoccupied land while any road adjacent thereto is being constructed or repaired:
- (j) To name and to alter the name of any road and to place on any building or erection on or abutting on any road a plate bearing the name of the road:
- (k) To sell the surplus spoil of roads:
- (l) For the purpose of providing access from one road to another, or from one part of a road to another part of the same road, to construct on any road, or on land adjacent to any road, elevators, moving platforms, machinery, and overhead bridges for passengers or other traffic, and such subways, tunnels, shafts, and approaches as required in connection therewith.”

Notes:

1. Councils also have the power to make **bylaws** over roads (**sections 679-92 Local Government Act 1974**) concerning such matters as hoardings etc, plantings and walls near bends and intersections, fencing along frontages.

2. **Section 353 Local Government Act 1974. General safety provisions as to roads—**Section 353 imposes a general duty on Councils to take all sufficient precautions for the general safety of the public, traffic and road workers, and in particular shall whenever the public safety or convenience renders it expedient, require the owner of adjoining land to enclose the land by fencing.

3. **The Fencing Act 1978** does not apply to the fencing of road frontages (ie there is no liability on adjoining owners or councils for equal shares of fencing costs).

COMMON LAW

Cf. **Section 319 paragraph (e) Local Government Act 1974:** To diminish the width of a road under section 319(e) is to partially stop it, and in order to exercise this power the council must comply with the provisions of section 342 (stopping and closing of roads) and the Tenth Schedule to the Act (conditions as to the stopping of roads etc). *Numerous cases.* See A.7.

Cf. **Section 319 paragraph (h) Local Government Act 1974:** Whilst a physical obstruction to a road may amount to a nuisance, its existence does not alter the legal status of the land as road, and does not amount to a partial stopping of the street. *Several cases.*

A.5 Nuisance, negligence, and obstruction

STATUTE LAW

“Section 242 Local Government Act 1974. Council not authorised to create nuisance—

Nothing in this Act shall entitle the council to create a nuisance, or shall deprive any person of any right or remedy he would have against the council or any other person in respect of any such nuisance.”

COMMON LAW

Cf. **Section 334 Local Government Act 1974. Erection (by council) of monuments, etc., and provision of facilities on or under roads.**

A permanent obstruction erected on a road without specific statutory authority and which renders the way less commodious to the public than before, is a “public nuisance”, provided the obstruction constitutes an appreciable interference with the traffic on the road. *Several cases.*

Erection of facilities, signs etc other than by councils may be subject to council bylaws under **section 684(1) Local Government Act 1974.**

While roads are vested in and under the control of a Council this does not mean that the Council is liable for obstructions to the road of which it has no knowledge. However, should the Council become aware (either through its own inspection, or through information passed to it by members of the public) that an obstruction which it has authorised has become a nuisance (eg —by impeding pedestrian or other traffic), it may be liable on the basis that it has allowed a person to create an obstruction that is a kind of public nuisance. *Mayor, etc of Invercargill v Hazelmere (1905) 25 NZLR 194.*

See also A.10.

A.6 Private occupation

STATUTE LAW

Section 341 Local Government Act 1974. Leases of airspaces or subsoil of roads:

Section 341(1) permits Councils to grant a lease above roads or of the subsoil beneath roads, provided that in the case of airspace, the Council shall ensure that sufficient airspace remains above the surface of the road for the free and unobstructed passage of vehicles and pedestrians lawfully using the road.

COMMON LAW

In *Moore v MacMillan* [1977] 2 NZLR 81 (SC) it was held that a road was incapable of being possessed by anyone to the exclusion of the general public's right of unhindered passage and that therefore the law did not recognise the "right" of any person to occupy a road to the exclusion of the public. Accordingly a person who erected cattle-yards on a road could not maintain an action in trespass against a person who demolished part of the cattle-yards. See also *Fuller v MacLeod and Wellington City* [1977] 2 NZLR 705 (affirmed on appeal [1981] 1 NZLR 370 (CA)), where a restrictive view was taken of the council's powers in relation to roads.

A.7 Closing and 'stopping' of roads

STATUTE LAW

"Section 342 Local Government Act 1974. Stopping and closing of roads:

(1) 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 ... shall not proceed to stop any road or part thereof on a rural area unless the prior consent of the Minister of Lands has been obtained; or

(b) Close any road to traffic or any specified type of traffic (including pedestrian traffic) on a temporary basis in accordance with that Schedule and impose or permit the imposition of charges as provided for in that Schedule."

Tenth Schedule:

See Appendix 1 on pages 36-37.

COMMON LAW

Cf. **Subsection 342(1) and Tenth Schedule Local Government Act 1974.** The council when considering objections received as a result of notification of its proposal to stop a road must act in accordance with the principles of natural

justice or fairness to the extent that they are necessary in light of the applicable circumstances. *Lower Hutt City v Bank* [1974] 1 NZLR 545 (CA).

The council must preserve a freedom, notwithstanding earlier investigations and decisions, to approach its duty of inquiring into and disposing of objections without a closed mind, so that if considerations by the objectors bring them to a different frame of mind, it can and will go back on its proposals. Where a council binds itself in advance to exercise its powers and duties in a specific way which appears to obstruct the fair consideration and disposal of public rights, the Court will interfere to prevent it purporting to perform that duty. *Lower Hutt City v Bank* [1974] 1 NZLR 545 (CA).

This case arose from a municipal corporation agreeing to grant a lease subject to it taking steps to stop streets. Objections were lodged against the stopping. Council was found to be unable to inquire into and dispose of the objections. *Bank v Lower Hutt City Council* [1974] 1 NZLR 385.

Cf. Tenth Schedule Local Government Act 1974:

Stopping of Roads

Clause 2: The public notice must include a summary of the council's proposals. *Re a decision by the Thames-Coromandel District Council* (1980) 7 NZLR 209.

Although not required by the Tenth Schedule, it is good practice for a council to show a proposal to stop a road in its district scheme (plan) and to indicate in that scheme the uses to which that land may be put once the road is stopped before initiating the stopping procedures.

If that has not been done, the council should initiate a change to the scheme having the object of including that information contemporaneously with any proceedings to stop the road in question. *Re a decision by the Thames-Coromandel District Council* (1980) 7 NZLR 209, and other decisions.

Where a road, formed or unformed, is in public use or may be required to serve planned development, the stopping of that road or a portion of it will generally be of planning significance. Where that is so, an intention to stop any part of such road is a matter that should find expression in the relevant district scheme. The lack of such a provision in a district scheme will not however be an impediment to a road stopping proceeding. *Proposal by Matamata County Council* (1988) 12 NZTPA 411.

The Planning Tribunal in *Re an Application by the Tauranga City Council* (1983) D E112, considered that the objector should have been notified of the meeting of the council at which the objections were to be considered and should have had the opportunity of being heard. This is in accordance with the views expressed in the *Lower Hutt City v Bank* [1974] 1 NZLR 545 (CA). (See also the judgment of the Supreme Court in the same case at [1974] JNZLR 385, 389, per Wild CJ). Doubt was also expressed by the Planning Tribunal as to the justification for the passing of a resolution by the council under the Local Government Official Information and Meetings Act 1986 to exclude members of the public when deliberating upon the objections.

Clause 6: As the initial clauses in the Tenth Schedule leading up to consideration by the Planning Tribunal do not specify that an objector must be a person likely to suffer injury by reason of the street closure, the council is required to consider all objections and remit the same to the Tribunal. The Tribunal on receipt of evidence as to status must only consider objections "likely to suffer injury" within the meaning of clause 6. *Several cases.* This would include persons likely to suffer injury by the purpose or purposes to which the stopped road will be put. *Several cases.*

A person who exercises a right of objection, whether affected by a proposal or not, does not become party to proceedings before the Planning Tribunal unless that person actually participates in such proceedings. The power to award costs under section 147(1) of the Town and Country Planning Act 1977 can only be exercised in relation to those persons who take part in proceedings before the Planning Tribunal. *Proposal by Matamata County (No 2) D A80/88.*

The Planning Tribunal when exercising its powers under clause 6 of the Tenth Schedule must be satisfied from the council's explanation that there is reasonable cause to justify the proposal. The clause does not however require the Tribunal to enquire into the best method of achieving the council's objectives or weighing the alternatives. These are matters within the discretion of the council. *Several cases.*

The Planning Tribunal when considering a proposal by a council to stop a road is 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 stoppage is outweighed by the private injury which would follow from the proposal. *Several cases.*

It follows from the requirements of this clause that the Tribunal has to form some opinion about the desirability in the public interest of the purpose or purposes to which the stopped road will be put. But the Tribunal has no power to make a binding declaration that a stopped road be put to a particular purpose; its power is simply to confirm or reverse the council's decision to stop the road. *Several cases.*

The relevant issue is the need for the road and not the need for the stopping. There is no statutory or other purpose to be served by the continuation of a private benefit arising out of the use of the land by the adjoining land owner. *Proposal by Matamata County Council (1988) 12 NZTPA 411.*

The Tribunal whether or not it has any qualifying objections cannot confirm the closure unless satisfied that adequate access to the land in the vicinity of the road is left or provided. *Several cases.*

In *an Application by Wellington City Council (1988) D C49/88*, the Tribunal considered that adequate access to land in the vicinity of a road was not left where the effect of the closure of a small portion of road was to leave insufficient space on the unformed part of the road to provide vehicular access to adjoining properties.

When considering whether adequate access will remain, it is necessary to

consider not only the additional distance that landowners may have to travel in the event of road closure, but also the standard of formation of that alternative access. *Application by Masterton County* (1988) D W45/88.

The Tribunal's power is merely to confirm or reverse a council's decision—it has no power to confirm the decision subject to conditions. *Re an Application by the Lower Hutt City Council* (1980) D C955. However, in *Re an Application by the Whangarei County Council* (1980) 7 NZTPA 222, the Tribunal considered a decision of the Council to stop an area of road subject to the exclusion of part of that area.

The provisions of the Tenth Schedule and of the sections of the Act to which it relates do not permit the Tribunal to direct an amendment to the proposed stopping—in the sense of an amendment to the plan. Where however the proposal is for the stopping of several defined portions of road, the tribunal is entitled to consider each of those portions separately and to come to different conclusions with respect to each. *Proposal by Matamata County* (1988) 12 NZTPA 411.

STATUTE LAW

“342A Local Government Act 1974. Temporary closing of roads by Police—(1) Where the senior member of the Police for the time being in charge at any place has reasonable cause to believe that—

- (a) Public disorder exists or is imminent at or adjacent to that place; or
- (b) Danger to any member of the public exists or may be reasonably be expected at or adjacent to that place; or
- (c) An indictable offence not triable summarily under section 6 of the Summary Proceedings Act 1957 has been committed or discovered at or adjacent to that place—

he may temporarily close, for such period as is reasonably necessary, any road at or leading to or from or in the vicinity of that place, or any part of that road, to all traffic including pedestrian traffic.

(2) In this section the term “road” includes a motorway, within the meaning of the Public Works Act 1981, a private road, and a private way.”

“Section 62 Civil Defence Act 1983. Closing of roads and public places—

(1) Where a state of national emergency or civil defence emergency is in force the Civil Defence Commissioner, the regional and Local Controllers, any constable, or any person so authorised in the operative regional or local civil defence plan may totally or partially prohibit or restrict public access, with or without vehicles on any road or public place within the area in respect of which the state of national emergency or civil defence emergency is in force.

(2) Every person commits an offence against this Act who fails to comply with any prohibition or restriction imposed under this section.”

The Transport (Vehicular Traffic Road Closure) Regulations 1965:

These provide powers for the temporary exclusion of vehicles for the purposes of special events, with public notification and objection procedures.

See Appendix 2 on pages 38-43.

A.8 Gates and cattle stops

STATUTE LAW

“Section 344 Local Government Act 1974. Gates and cattle stops across roads—(1) The Council may, in writing, permit the erection of a swing gate or a cattle stop or both across any road, where—

(a) In the council’s opinion it is not practicable or reasonable to fence the road;
or

(b) By agreement the road has been taken or may be constructed through private lands and the owner or occupier requests that a gate or a cattle stop or both be erected on the outer boundary at the cost (including maintenance) of one or both parties as may be agreed.

(2) Where a gate is erected across a road under subsection (1) of this section, a board with the words “Public Road” legibly painted in letters of not less than 75 millimetres in height shall be fixed upon each side of the gate and at all times maintained thereon by the person authorised to erect the gate, or at whose cost it has been agreed that the gate shall be erected and maintained.

(3) Where a gate or cattle stop across any road is considered redundant or an inconvenience, either by the council or by a petition supported by 20 or more residents of the district, the council may serve notice upon the person authorised to erect the gate or cattle stop of the council’s intention to remove it.

(4) Within 14 days after the service on any person of a notice pursuant to subsection (3) of this section, he may object in writing to the council, against its intention to remove the gate or cattle stop.

(5) Not later than 14 days after receiving any such objection, the council shall consider it, and, after hearing any submissions made by the objector or on his behalf, the council may dismiss the objection or decide not to proceed to remove the gate or cattle stop or make such modifications to its proposal as it thinks fit.

(6) The erection across any road of any gate or cattle stop shall not be commenced unless and until plans of the gate or cattle stop have been submitted to and approved by the council. The council may make such alterations in or additions to any plans submitted to it as it thinks fit, and may require the erection of such protective or warning devices as it considers necessary; and the gate or cattle stop shall be erected in accordance with the plans and requirements and in such position as the council directs.

(7) The Minister of Transport may from time to time, by notice in the *Gazette*, prescribe specifications for gates and cattle stops.

(8) The person by whom any swing gate or cattle stop has been erected pursuant to a permit granted under this section, and his successors in title, shall maintain the swing gate or cattle stop to the satisfaction of the council.

(9) Without limiting the power to make bylaws conferred on the council by

section 684 of the Local Government Act 1974 [relating to subject-matter of bylaws involving roads], the council may from time to time make bylaws regulating the use of swing gates and cattle stops erected pursuant to this section, prohibiting the causing of damage to such swing gates and cattle stops, and prohibiting the leaving open of such swing gates.

(10) Neither the Crown nor the Minister of Transport nor the council shall be liable for damages in respect of any accident arising out of the existence of a gate or cattle stop across any road erected under a permit granted pursuant to this section.

(11) The power conferred by this section to erect and maintain any swing gate or cattle stop on any road shall be deemed to include power to fence the road up to that gate or cattle stop and to maintain that fence, and every reference in this section to a swing gate or cattle stop shall be deemed to include a reference to such a fence.

(12) This section shall apply with respect to every gate or cattle stop and fence lawfully erected across any road at the commencement of this Part of this Act pursuant to a permit granted under section 141 or section 142 or section 144 of the Public Works Act 1928 or section 11 of the Public Works Amendment Act 1935, as if it had been erected pursuant to a permit granted under this section.

(13) The Gates and Cattle Stops Order 1955 (SR 1955/67) shall continue in force and have effect after the commencement of this Part of this Act as if it were a notice issued under subsection (7) of this section."

The Gates and Cattle Stops Order 1955:

See Appendix 3 on pages 44-45.

COMMON LAW

The purpose of section 344 Local Government Act 1974 involves an indulgence to owners of land adjoining a public road to avoid the obligation they otherwise have to fence the roadway. It is not open to the local authority to place conditions or restrictions on, or confer rights or obligations upon the permit holder. It is however a necessary consequence of the grant of a permit that the permit holder can require that the gate be left in the position (whether open or closed) in which a person lawfully using the road found it. This is the position even where bylaws have not been made under subsection (9) to prohibit the leaving open of gates. *Hanning v Cooke* (1988) AP 117/87 (Dunedin Registry) 18/8/88 (HC).

A.9 Disposal of roads

STATUTE LAW

“Section 345 Local Government Act 1974. Disposal of land not required for road—(1) Subject to subsection (3) of this section, where in forming a new road, or in diverting or stopping or diminishing the width of any existing road, any part thereof is no longer required as a road, the council may—

(a) Either—

(i) Sell that part to the owner or owners of any adjoining land for a price to be fixed by a competent valuer appointed by the council to value that part; or

(ii) Grant a lease of that part to the owner or owners of any adjoining land for a term and a rental and subject to such conditions as the council thinks fit;— and, if no such owner or owners is or are willing to purchase the land at the price fixed or, as the case may be, take a lease of that part for the term and at the rental and subject to the conditions fixed, the council may, pursuant to a special order, sell or lease the land by public auction or private tender; and a conveyance, transfer, or lease under the seal of the council shall constitute a valid title to the land; or

(b) Apply that part, or any part thereof, to any purpose to which the council may apply land, either under this Act or any other enactment; or

(c) Grant a lease of that part, or any part thereof, for such term and on such conditions as it thinks fit for use for any purpose to which the council may apply land, either under this Act or any other enactment; or

(d) Transfer that part, or any part thereof, to the Crown for a public reserve or for addition to a public reserve or for any purpose of public convenience or utility or as Crown land subject to the Land Act 1948.

(2) Where the council pursuant to subsection (1)(a)(i) of this section sells the land to the owner or owners of any adjoining land, it may require, notwithstanding the provisions of any other enactment, the amalgamation of that land with the adjoining land under one certificate of title. The District Land Registrar may, if he thinks fit, dispense with any survey that would otherwise be required for the purposes of the issue of a certificate of title under this section, and may issue a certificate of title limited as to parcels.

(2A) Where the council acting under subsection (2) of this section requires the amalgamation of the land sold with the adjoining land under one certificate of title—

(a) The separate parcels of land included in the one certificate of title by virtue of that requirement shall not be capable of being disposed of individually or of again being held under separate certificates of title, except with the consent of the council:

(b) Where that adjoining land is already subject to a registered instrument under which a power to sell, a right of renewal, or a right or obligation is lawfully conferred or imposed, the land sold shall be deemed to be and always have been

part of the land that is subject to that instrument, and all rights and obligations in respect of, and encumbrances on that adjoining land shall be deemed also to be rights and obligations in respect of, or encumbrances on, that land sold.

(2B) On the issue of a certificate of title to the land referred to in subsection (2A) of this section, the District Land Registrar shall enter on the certificate of title a memorandum that the land to which it relates is subject to paragraph (a) of that subsection, and, if the circumstance so require, that it is subject to paragraph (b) of that section.

(3) Where any road along the bank of a river or stream with an average width of not less than 3 metres or along the margin of any lake with an area in excess of 8 hectares or along the mean high-water mark of the sea or of any of its bays, inlets, or creeks, or any portion of any such road, is stopped or diminished in width, the land which thereby ceases to be a road shall become a public reserve vested in the council as a local purpose reserve under the Reserves Act 1977 for the purpose of providing access to the river, stream, lake, or sea, as the case may be, and to protect the environment:

Provided that the council, with the consent of the Minister of Conservation, may waive this requirement in respect of the whole or any part or parts of the land which ceases to be road, subject to such conditions as the council may impose or as that Minister may require, and thereupon, subject to any such conditions, subsection (1) of this section [sell, lease, transfer to Crown as reserve or Crown land] shall apply with respect to the land or, as the case may be, that part or those parts thereof."

A.10 Offences

STATUTE LAW

"Section 357 Local Government Act 1974. Penalties for damage to roads—

(1) Every person commits an offence who, not being authorised by the council or by or under any Act,—

(a) Encroaches on a road by making or erecting any building, fence, ditch, or other obstacle or work of any kind upon, over, or under the road, or by planting any tree or shrub thereon; or

(b) Places or leaves on a road, any timber, earth, stones, or other thing; or

(c) Digs up, removes, or alters in any way the soil or surface or scarp of a road; or

(d) Damages or, except with the consent of the council, removes or alters any gate or cattle stop lawfully erected across any road; or

(e) Allows any water, tailings, or sludge, or any filthy or noisome matter, to flow from any building or land in his occupation on to a road; or

(f) Wilfully or negligently causes or allows any oil, or any liquid harmful to sealed or paved road surfaces or likely to create a danger to vehicles on such

surfaces, to escape on to any road having a sealed or paved surface; or
(g) Causes or permits any timber or other heavy material, not being wholly raised above the ground on wheels, to be dragged on a road; or
(h) Causes or negligently allows any retaining wall, foundation wall, or fence erected on any land, or any batter or slope of earth, or any building, erection, material, or thing, to give way or fall so as to damage or obstruct a road; or
(i) Digs up or removes any stone, gravel, sand, or other material from a river bed within 50 metres of a bridge or ford on any road or any dam on which a road is constructed; or
(j) Does or causes or permits to be done any act whatsoever by which any damage is caused to a road or any work or thing in, on, or under the same—and is liable to a fine not exceeding \$200 and, where the offence is a continuing one, to a further fine not exceeding \$20 for every day on which the offence has continued and may be ordered to pay the cost incurred by the council in removing any such encroachment, obstruction, or matter, or in repairing any damage caused as aforesaid:

Provided that no fine shall be imposed unless the information is laid by authority of the council or by an officer thereof.

(2) The Council shall not authorise or suffer any encroachment on a road if the encroachment would or might interfere with or in any way obstruct the right of the Crown, or of any person so authorised by any Act, to construct, place, maintain, alter, remove, or otherwise deal with any electric wires, telephone wires, telegraph wires, pneumatic tubes, or gas pipes on, over, or under the road, except with the prior written consent of the Minister of the Crown, the person, or principal administration officer of the body, who or which is responsible for any such services or utilities.”

COMMON LAW

The offences referred to in paragraphs (c), (d), (g), and (i) are complete in themselves, and cannot be regarded as continuing offences. *Taylor v Allan* (1902) 4 GLR 397.

An obstruction by or with the authority of the council is legal unless it amounts to a public nuisance or interferes with individual rights. *R v Wellington City* (1896) 15 NZLR 72 (CA).

Although a council may authorise a person to encroach upon and cause an obstruction on a street, this authorisation will not exempt that person from his common law liability either in respect of a nuisance arising out of an unreasonable interference with the public right of passage along the road—*Amalgamated Theatres Limited v Charles S Luney Limited* [1962] NZLR 226 (SC)—or by reason of an interference with a frontager’s rights of access to the road from all points of his property. *Fuller v McLeod and Wellington City* [1977] 2 NZLR 105 (SC). Affirmed on appeal [1981] 2 NZLR 390 (CA).

Where a council authorises private work to be constructed upon a road and that work subsequently becomes a nuisance, it will be liable if, having knowledge of the nuisance, it permits the work to remain on the road or

otherwise fails to abate it. *Invercargill Borough v Hazelmere* (1905) 25 NZLR 194 (SC); 8 GLR 251; and *Mee v DWD Hotels Ltd (No 1)* [1974] 2 NZLR 260 (SC).

The council has the right, independently of this section, by virtue of its control over roads to compel or recover the cost of removal of an obstruction or erection on a road. *Snushall v Kaikoura County* [1923] NZPCC 670 (removal of fencing on unformed road). See also *Hutt County v Whiteman Bros* [1923] NZLR 751; [1923] GLR 236, and *Thames Borough and County v Kauri Timber Co Ltd* [1929] NZLR 712, [1929] GLR 489. These decisions must be considered in light of the relevant legislation of the time, which vested merely control not ownership in a county.

A breach of this section by any person does not give rise to any right of action against the controlling authority of the road by a person alleged to have suffered a loss as a result of such breach: *Strange v Andrews* [1956] NZLR 948.

STATUTE LAW

“Section 694 Local Government Act 1974. Wilful or negligent destruction of or damage to works or property—(2) Every person commits an offence against this Act who—

(a) Wilfully destroys, damages, stops, obstructs, or otherwise interferes with anything forming part of or connected with any works or property (other than those mentioned in subsection (1)* of this section) vested in or under the control of the council;...

(* drains, watercourses, protective works, electricity, gas, or water works, water races).

“Section 695 Local Government Act 1974. Recovery of amount of destruction, damage, etc., to works or property—(1) Every person who wilfully or negligently destroys, damages, stops, obstructs, or otherwise interferes with any works or property established, constructed, acquired, or used by the council under this Act shall be liable for the amount of that destruction or damage or, as the case may be, the cost incurred by the council in removing that stoppage or obstruction or any loss or expenses caused to or incurred by the council by the stoppage or obstruction or interference, to be recovered by the council in any Court of competent jurisdiction.

(2) The council may replace or repair any works or property established, constructed, used, or acquired by the council under this Act and wilfully or negligently destroyed or damaged, or remove or alter it as the council thinks fit, and may recover from that person in any Court of competent jurisdiction the full cost of the work and the full amount of all the damage done or caused by him.”

“Section 698 Local Government Act 1974. General penalty—(1) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding \$500 and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued.

(2) Where any order is made under this Act by any Court directing the execution of any work or the doing of any act other than the payment of a sum of money under a conviction, whether as a fine or otherwise (and no punishment for disobedience to the order is otherwise) provided by this Act, every person disobeying the order commits an offence against this Act.

(3) Where a person commits a continuing breach of any provision of this Act which is an offence to which this section applies, then, notwithstanding anything in any other Act, a District Court may, on application by the council, grant an injunction restraining the further continuance of the breach by that person.

(4) An injunction may be granted under subsection (3) of this section,—

(a) Notwithstanding that proceedings for the offence constituted by the breach have not been taken; or

(b) Where the person is convicted of such an offence, either

(i) In the proceedings for the offence, in substitution for or in addition to any penalty awarded for the offence; or

(ii) In the subsequent proceedings.

(5) The continued existence of any work or thing in a state, or the intermittent repetition of any action, contrary to any provision in this Act shall be a continuing offence for the purposes of this section.”

“Section 699 Local Government Act 1974. Offences punishable on summary conviction—

(1) Subject to this Act, every offence against this Act shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of an offence against this Act or any regulations or bylaws under this Act may be laid at any time within 12 months from the time when the matter of the information arose.”

“Section 22 Summary Offences Act 1981. Obstructing public way—(1)

Every person is liable to a fine not exceeding \$500 who, without reasonable excuse, obstructs any public way and, having been warned by a constable to desist,—

(a) Continues with that obstruction; or

(b) Does not desist from that obstruction but subsequently obstructs that public way again, or some other public way in the same vicinity, in circumstances in which it is reasonable to deem the warning to have applied to the new obstruction as well as the original one.

(2) In this section—

“Obstructs”, in relation to a public way, means unreasonably impedes normal passage along that way:

“Public Way” means every road, street, path, mall, arcade, or other way which the public has the right to pass and repass.”

B. Legislative Threats

The Resource Management Bill 1989

If passed, as amended up until May 1991, this Bill will allow easy disposal by district councils of roads along shorelines (the 'Queen's Chain') by removing the existing power of approval or veto by the Minister of Conservation over such disposals (6th Schedule to the Bill amends section 345(3) Local Government Act 1974 making disposal subject only to the council's district plan and rules). The Resource Management Act is due to come into force late 1991.

Road Management Review

The Ministry of Transport has a review of road management legislation under way. This will likely see further shifting of responsibility from central to local government, with systematic removal of Ministerial and statutory constraints that protect public rights of usage.

It is believed that changes being canvassed within Government include the possibility of private ownership and management of 'public' roads, greater reliance on the courts than on government to constrain the actions of the road controlling authorities, mechanisms for the speedy disposal of unwanted roads driven by a requirement to achieve monetary returns on road 'assets', new provisions allowing restrictions on public use in addition to the existing powers of temporary closure and permanent 'stopping'.

When considering changes to 'Queen's Chain' legislation by the previous and present Governments, it is clear that in addition to the above "reforms", recent times have seen public rights of access to the countryside under attack on a scale never before contemplated. Vigorous opposition to any further weakening of public rights will be necessary otherwise much of what is special to the New Zealand outdoors will be lost.

C. A 'Public Way' System for New Zealand

As a counter to Government-initiated threats to public access to the countryside, citizen action is necessary to reinforce existing public rights. Pressure needs to be generated on local government politicians and officials who may shortly be given greater powers of alienation over public roads. The maxim of "use them or lose them" is very applicable.

The existing network of unformed public roads is in part known and used by some members of the community. The guidance provided in this section should assist with further identification and use for recreational purposes.

In most rural areas of New Zealand a roading network, both formed and unformed, already exists. Most of these roads connect in a legal sense. The main limitations to use of unformed roads are whether they are identifiable on the ground, are physically traversable by the desired mode of travel, and whether they serve a recreational purpose. It must be recognised that their layout was designed primarily to serve communication and subdivisional needs rather than recreation.

However the big advantage of the road network as a recreational resource is that it already exists and the public's right of use is well established. This network is therefore capable of immediate use. Local needs will determine which parts of it are useful for recreation.

Unlike the 'Walkways' system that has been slowly developing over the last twenty years, there are no legal obstructions in the way of public use over roads. Because of such difficulties, official 'Walkways' have tended to be established over public lands rather than provide new opportunities over private lands, as was originally intended. 'Walkways' have not achieved the original goal of long-distance connection or even many local connections. This result, in large part, reflects the difficulty in obtaining private landowner consent.

Unformed roads have the potential to overcome this difficulty, providing the basis for a system of 'public ways' throughout rural New Zealand. The achievement of this does not necessarily require a master plan, or oversight by a national authority. Local initiatives by individuals, groups, or district councils are sufficient to allow greatly enhanced recreational opportunities.

C.1 Why 'Public Way' instead of 'Road'?

To most members of the public the word 'road' has inseparable connotations of 'motor vehicle'. This is despite the origins of most of our roads well and truly pre-dating such mechanical conveyances.

The term 'public way' removes the direct motor vehicle connotation while remaining positive in terms of whose right-of-way it is and who is entitled to

use it, but neutral in terms of the form of use permitted. It is also the antithesis of a 'private way' (as defined by section 315 of the Local Government Act 1974).

The generic term 'public way' is also used in relevant legislation and is widely understood. Cf. Section 22 Summary Offences Act 1981—
"Public Way" means every road, street, path, mall, arcade, or other way which the public has the right to pass and repass."

Description and on-the-ground identification into subcategories of 'walking track', 'walking route', 'path', 'bridle track', 'dry weather vehicle track' etc can as necessary be undertaken within the ambit of 'public way' so as to provide the public with guidance as to its appropriate form of use.

It must be recognised that no one user group has exclusive claim over the use of public roads. In the same way that adjoining landowners cannot lawfully exclude the public, walkers cannot exclude vehicles, horses, cycles, or vice versa. Public roads are common property that must be shared with whoever desires their use. What will limit use however is the physical suitability for a given class of user. For instance not all roads are suitable for more than foot traffic, therefore some separation of potentially conflicting users will occur. Local custom and social pressure can also influence the types of use.

If walkers want tracks exclusively for themselves, then the New Zealand Walkways Act 1990 provides a means of providing such. However in terms of rights of access over 'Walkways' compared to public roads, the former can have conditions of use attached and can be closed at any time at the instigation of the controlling authority or adjacent landowners. There are no rights of public objection to such closures. The Walkways Act was originally intended for negotiating access over private lands in the absence of other public rights. In the view of the writer they are necessary for achieving a measure of public access over private lands but are an inferior substitute to the common law right of passage without hindrance provided by public roads.

It remains to be confirmed that the general purpose of the Walkways Act (section 3) to provide "unimpeded foot access to the countryside" will override attempts at restricting public access through temporary closure of unformed legal roads that are overlaid by 'Walkway' status. Such a move is contemplated by at least one local authority so as to accommodate unauthorised farming occupation of roads.

In the absence of local authority efforts to safeguard existing public rights or to promote enhanced recreational use over 'green' roads it may be necessary for citizen groups and individuals to instigate their own efforts. The following sections are an outline of what may be necessary to do so.

C.2 Research:

Determining if and where public roads exist

This will be a significant part of your expenditure, both in time and money.

LAND APPELLATION

Land appellation in New Zealand results from the legal identification given to each parcel of land. This is by an allotment number referenced to the survey and land district in which it is situated. New Zealand is divided into twelve land districts. Each land district is divided into survey districts (SD). These have distinctive geographic names. Subdivision of land differs slightly between land districts. The method common to all however, is Sections of a Block.

Example—

“Section 56, Block VIII Wanaka SD, Otago Land District.”

Other methods used are Rural Sections, Allotments of Parishes, Sections of Squares, Lots of Deposited Plans (DP), Sections of Settlements, but in these cases the Sections (or Allotments) are *not of* the Survey District but are Sections (or Allotments) *situated in* a Survey District.

Example using Rural Section—

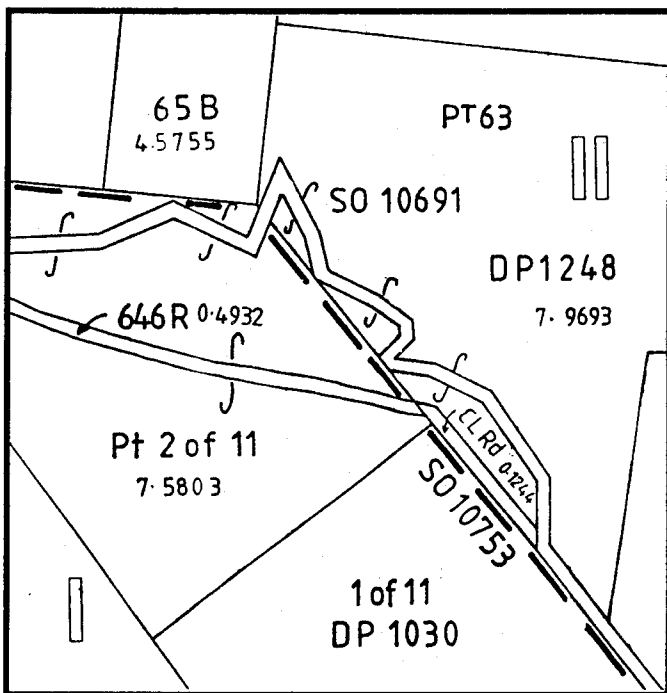
“RS 4368 situated in Blocks IX and X Geraldine SD, Canterbury Land District.”

CADASTRAL MAPS

A relatively cheap preliminary step towards determining the existence of roads (but not conclusive evidence), and to allow you to determine which roads you are interested in, is to acquire copies of the ‘New Zealand Cadastral Map’ series NZMS 261 (\$18.45 each inclusive of GST) from the Department of Survey and Land Information (DOSLI). These are at the same scale as the metric topographic series NZMS 260 (1:50 000). You can overlay these on a light-table to see how closely formed roads align with the legal alignments, or to determine the position on the topo’s of unmarked legal roads. However at this scale only a rough idea can be obtained, and as the maps are often out of date, they do not always tell you if a particular road is still legally open. But they do provide a most useful first step. You must also inspect ‘record’ or ‘road legalisation’ maps.

DISTRICT SCHEME PLANNING MAPS

These provide another way of determining the general existence of public roads, but like cadastral maps, do not always distinguish between open or closed roads or with other forms of rights of way (ie private) to which the public have no right of use. District Councils will provide photocopies of particular maps. Anyone is entitled to inspect these plans free of charge.



Land Appellation Reference (pt. Record Map)

Block Numbers	in outline
Sections	eg. 646R (former road)
Allotments of DP's	eg. 65B, Pt 63, 1 of 11
Deposited Plan	DP
Survey Office Plan	SO
Subdivision area (ha)	4.5755 (for Lot 65B)

Other References

Land District ...	...	...	...	...	---
Survey District	...	...	...	...	---
Block Boundary	...	...	...	...	---
Road ...	...	...	...	...	~~~~~
Subdivision Boundary	...	...	...	...	—/—
Original Subdivision Boundary	...	...	...	...	---
Subdivision Section Number	...	...	...	...	..... 21
Subdivision Lot Number	...	...	...	...	..... 12
Vinculum: (indicates common but separated parts of same allotment)	...	...	...	...	—/—

CERTIFICATES OF TITLE (CT's)

Roads, sometimes with dimensions, are usually shown on the diagrams in certificates of title for adjoining properties, but again this is an expensive (at \$5 per title), as well as an incomplete means of getting road information. Remember that they are merely diagrams on the CT's—they are not survey plans.

CT's can however provide key evidence of a road 'dedication', ie where a public road has been excluded from a title. To obtain CT's you must first have the correct legal description for each parcel of land you are interested in. Obtain these from record maps. Use the indexes in each district Land Registry Office (Lands and Deeds) of the Department of Justice (usually in the same building as DOSLI). Most indexes are manual. These are now being computerised. By using the legal description you obtain CT reference numbers from the index, which you then quote on your search coupon request for a copy of the CT.

You may feel that the expense is justified in terms of finding out who the adjoining land owners are so that contact can be made, if this is desirable. There are less expensive ways of doing this. See '*Contacting adjoining owners*' on page 29.

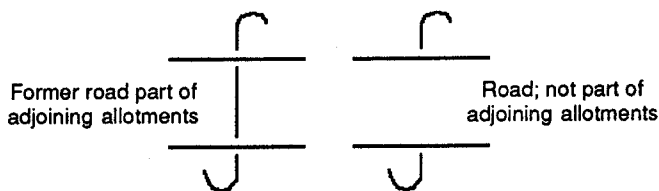
'Memorials' are recorded on the CT's. Use their numbers to request inspection of any relevant documents eg. caveats, proclamations, easements (copying free of charge).

CT's can also record rights-of-way (ROW) granted to the public over private land. Inspection of CT's may provide the only clue as to their existence. In some cases public roads may be shown on CT's and associated Deposited Plans (DP), but not on record maps. In cases where doubt exists it is advisable to check back through earlier CT's (previous CT number on top left corner) to the original Deeds and Crown Grants. These are in bound volumes and may be inspected free of charge. The Land Registry staff will be able to point you in the right direction. See also Appendix 4 on pages 46-47.

RECORD AND ROAD LEGALISATION MAPS

The statutory record of the existence of legal roads are 'record' and 'road legalisation' maps held by DOSLI in each of 12 land districts throughout New Zealand. Their offices are to be found in Auckland, Hamilton, New Plymouth, Wellington, Gisborne, Napier, Nelson, Blenheim, Christchurch, Hokitika, Dunedin, and Invercargill.

Record maps show the alignment of all property boundaries including road boundaries, and the current legal status of the roads, ie whether they have been 'stopped' and incorporated into adjoining private titles. Road legalisation maps, prepared since the introduction of black and white plans in 1973, provide an incomplete coverage of road information. They duplicate the road information of record maps but add an index of authorities for roads such as gazette notices, local body resolutions, and Crown Grants, that are the legal actions establishing or revoking roads. Where coverage by road legalisation maps is



Vinculums Across Roads

lacking, the pre-1973 colour record maps must be used. Map indexes in DOSLI offices show the coverage of record and legalisation maps. The latter's reference numbers start with alphabetical metric sheet numbers. The old colour record maps have numerical numbers.

Record maps have references to Survey Office Plans (SO's), or Deposited Plans (DP's) that contain the original or interpreted survey information which allows definition of roads on the ground.

Unfortunately there are now inspection charges for all these records (\$5 per map) with an extra charge for inspection plus one A4 copy. For your money's worth you are better to go for the complete information of a record map rather than a road legalisation map, and ask for inspection *and* a copy of the area you specify. This will provide a useful take-away index of all land descriptions in the vicinity you are interested in, hopefully without the necessity of further inspection charges.

If disputes arise as to the legal status of a road (eg was it established properly, or has it been stopped?), then inspection of a road legalisation map and follow-up research is warranted.

Map Copy Prices:

Record maps—A4:\$6.40; A3:\$8.90; A2:\$14.50; A1:\$22.90.

Road legalisation maps—A4:\$2.50; A3:\$3.50; A2:\$5.80; A1:\$9.10.

(Prices inclusive of GST as at 28 April 1991).

INTERPRETING RECORD MAPS

You will usually be shown a monochrome plan. Pre-1973 plans that have not been superseded have legal roads coloured in sienna (brown).

The record map will show if a road has been 'stopped.' If nothing to this effect is printed over or beside the area thought to be road, there is no legal description for the area presumed to be a road, there are no 'vinculums' going *through* a road, and there are no solid lines across the intersection with a known road, you can be reasonably certain as to its 'open' status.

From the scale of the record map you will be able to approximate its width, length, and changes of alignment relative to adjacent allotments. This should

assist determining its position on the ground. However to be certain you must also consult DP's or SO's. The references to the relevant plans are shown on the record map.

Section 315 of the Local Government Act 1974 is what defines a road but it must be correctly interpreted. Often there are instances where roads are in fact public, such as by implied dedication, and although road legalities are generally straight-forward, there are cases where doubt exists. It is essential where disputes are likely that you are sure that a given road is legal, and it is not on adjoining private land. Advice on legality can be obtained, for a fee, from the Chief Surveyor (DOSLI) of the Land District concerned. If the evidence is very obscure then only the Courts can determine the question.

DEPOSITED PLANS (DP's)

Both DOSLI and Lands and Deeds hold copies of these. Inspection is free, however if you want a copy from DOSLI you will be charged (see prices under SO's). You will only see a microfilm that often doesn't show all the details of the originals. You are better to inspect the originals at Lands and Deeds and photocopy the relevant bits yourself.

DP's usually record topographic information, as well as boundaries, distances and bearings. These are often the most useful for on-the-ground investigations by the lay person. ROW in favour of the public may also be shown.

Historically distances were recorded as links—

One link equals 0.201168 metres exact

5 links to the metre approximate

SURVEY OFFICE PLANS (SO's)

These are the record of the surveys that fixed the boundaries of the road you are interested in and show bearings and horizontal distances. This is what a surveyor would use, plus copied information from the original surveyor's field book (referenced on the SO), to locate pegs and other survey marks such as buried metal rods and tubes. Note that it is an offence to interfere with or remove survey marks.

If you have doubts about locating the boundaries of a given road obtain a copy of the relevant SO's or DP's. These may assist you to pick up enough survey pegs to be sure that you are in the right location. Along with other features on the surface, such as old fences, in most cases this is as far as you will need to go. Only in the case of doubt, if there is risk of trespass, or in disputes over boundaries with adjoining owners would the services of a surveyor be necessary. Perhaps this is an area where the district council should be asked to help.

SO and DP Prices (include GST)—A4:\$4.60; A3:\$5.30; A2:\$7.30; A1:\$8.50.

C.3 Delving around on the ground

In rural areas, as opposed to the backcountry, there is normally enough 'cultural' evidence on the ground to confirm the existence of old or disused roads. After 150 years of subdivision and settlement, fences, walls, lines of trees, hedges, and building remains are direct clues to look for. Even if 'boundary' fences etc are not on the exact legal boundaries they should indicate the approximate boundaries and latitudes you have to work within. It will normally be safe to walk up the approximated centre of a legal road that is one chain (20 metres) or even a half chain wide without fear of trespass. The most obvious evidence to look for are formations like cuttings or embankments, especially in combination with fences etc. Remember it doesn't have to be sealed or metalled to be a road!

Don't be put off by ungated fences and other obstructions across legal roads, if you are certain as to the alignment of the road. The creator of obstructions, and the district council (including predecessors) if it approved of them, may be liable for the nuisance they create. Be wary of 'private property' signs though—they *may* be right. Although the presence of such signs do not constitute a warning under the Trespass Act, it is advisable to double-check your conclusions about the status and location of the road before ignoring them. See '*A note about the law of trespass*' on page 31.

It is where there are no formations, no fences and no obvious survey pegs that greatest doubt arises. This is the true 'paper road' situation. In the absence of other evidence, a single fence line along the presumed alignment of a road may not tell you which side of the fence the legal road is on. You will have to make a greater effort yourself or enlist the services of a friendly surveyor. Remember the onus is on you not to trespass on adjoining property and not to cause others to trespass.

Many legal roads are in 'Queen's Chain' situations—ie around the shores of the sea, lakes, and up the banks of rivers. In stable shoreline situations their physical existence is easily determined. They are usually one chain (20 m) wide or as indicated on the record map or SO. They are differentiated from other types of Queen's Chain by the absence of descriptions such as 'Crown land reserved from sale under Section 58 Land Act' or part description thereof, or as 'marginal strip' or reference to section 24 of the Conservation Act 1987. Queen's Chain roads are normally shown as contiguous with abutting roads. As their alignments do not adjust to natural changes, shoreline erosion may have removed your legal road!

CONTACTING ADJOINING OWNERS

Whether you do this or not is a matter of judgment rather than a legal requirement. The money you have available will also be a consideration. Full title checks for all properties abutting a legal road can be an expensive business.

If you feel there is an obligation for you to contact all adjoining landowners before you commence encouraging public use along a legal road you run the risk of opposition before you start. Very quickly you may hear expressions of proprietorship over the roads, with the strong possibility of outright refusals of 'permission'. Then what do you do? Succumb to local pressures, possibly supported by the district council in control of the roads, or attempt to carry on in the face of mounting opposition every step of the way? Discretion, particularly during the investigative stage, may be a more prudent course dependent on what the local 'climate' is.

If you wish to find out in advance who all the adjoining owners are, short of title searches, there is one inexpensive means that may provide you with the same information.

Lands and Deeds Offices have available for free inspection street indexes compiled from Valuation Department roles. With the use of the legal descriptions of adjoining properties obtained from record maps, if the properties front on to a named street, you may be able to learn who individual owners are. At best you will obtain incomplete information, still requiring some title searching to fill in the gaps.

OBSTRUCTIONS

Under law anything other than an officially approved unlocked swing gate with a notice saying 'Public Road', a cattlestop, and associated fencing across a road alignment may be liable to be deemed to be a public nuisance. In practice however not every obstruction is a nuisance, particularly if a convenient means of getting past it is available without the necessity of committing trespass on adjoining land. Obstructions such as fences without gates can be useful in barring motor vehicles where these are undesirable from a walker's viewpoint, and can be tolerated provided a stile is available. Perhaps if an adjoining landowner objects to a stile being erected, point out that you do not have to tolerate his or her fence, but will do so as long as the stile is not interfered with. The alternative for the land owner is the expense of gates and completely uncontrolled public use, or the possible removal of the fence and consequent necessity to fence his or her boundary with the road.

If satisfactory local arrangements cannot be made so as to allow public passage past obstructions there are several possible remedies available. While the roads are vested in and under the control of the Council this does not mean that the Council is liable for obstructions to the road of which it has no knowledge. However, should the Council become aware (either through its own inspection, or through information passed to it by members of the public) that an obstruction which it has authorised constitutes or has become a nuisance (eg. by impeding pedestrian or other traffic), it may be liable for damages. See *Mayor etc of Invercargill v Hazelmere* (1905) 25 NZLR 194.

There are several courses of action open to Councils to remove obstructions. The Council could cause the obstruction to be removed, and recover the cost of removal from the person placing the obstruction on the road. Alternatively, the Council could seek a Court order compelling its removal. In addition, the Council could bring a prosecution under the Local Government Act against the person who caused the obstruction.

Obstructions without Council authorisation bear liabilities for the person who erected the obstruction. A common law right exists for members of the public to remove obstructions, however such action may carry liabilities for damages dependent on the circumstances. The most recent case: *Moore v MacMillan* (1977) 2 NZLR 81 held that no liability existed. Seek legal advice first on potential liabilities and the manner of the intended removal of the obstruction. Hopefully the District Council will be responsive to requests for action. As noted above they have all the powers necessary to remove obstructions, but not necessarily the will to do so. Court action against the person who erected the obstruction, or the Council that approved it, may be a safer but expensive option.

A NOTE ABOUT THE LAW OF TRESPASS

Cf. **Trespass Act 1980.**

Trespass itself, without a dog, weapon, or vehicle, is not an offence, however in addition to some consequent actions it is.

Every person commits an offence who trespasses on private land and, after being warned to leave by the lawful occupier, neglects or refuses to do so. The warning can be given either orally or in writing by registered letter. Signs or public notices are insufficient warning.



*Insufficient warning
(and spelling!)*

Every person commits an offence who wilfully trespasses again on the same place within 2 years after the giving of a warning.

The occupier can require any person found trespassing to give their correct name and home address. Not to do so is a further offence.

Every person commits an offence who wilfully or recklessly disturbs any domestic animal on private land, or does not leave gates (open, closed, fastened) as found.

Offences and potential penalties under the Trespass Act are serious (ie large fines or imprisonment).

C.4 Signs, stiles, and markers.

Where roads are poorly defined, or greater public use is to be encouraged, it is desirable that the route is adequately defined to avoid inadvertent trespass on to adjoining land. The erection of signs may be subject to local bylaws.

The following specifications have been used on the Otago Peninsula with economy in mind. Handy hints on technique are included—

Sign Specifications

Sheets of (1.2 x 2.4m) 12.5 mm Cp-D (untreated) construction ply provide a relatively cheap medium for signs (approximately \$50 per sheet). Hand pick your sheets to get reasonably knot-free surfaces on both sides.

One sheet will provide up to 24 signs at 300 x 400 mm, or 16 at 300 x 540 mm for directional signs. Cost works out at \$2-3 per sign.

Painting:

Prime, undercoat, then top-coat with (white) gloss enamel, with sprayed on (black) lettering 40 or 51 mm high using custom-made stencils. Cost approximately \$1 per sign.

'Epicolour' Acrylic Epoxy Aerosol (ozone friendly) Paint was found to be suitable for lettering (\$8.60 per 400 ml can).

Stencils:

Light card (foolscap manilla folders) was found to be suitable. Using master stencils, set out each sign. 'Radiant' Lettering Guide Stencils sizes 40 mm (\$3.90) and 51 mm (\$5.40) were used (available from Whitcoulls). One customised stencil can be used for many signs with common wording. Cover both surfaces with wide 'Sellotape', then cut out letters with sharp knife/scalpel (steel rule handy for straight cuts).

Spray Painting Technique:

Lightly coat surface of stencil to be in contact with sign with spray adhesive (eg 'Scotch') and leave to dry at least half an hour before use. (Note: excess adhesive causes smudging of paint edges). Then press into position on blank prepared sign (only light but flush contact required) and place on horizontal surface. Mask excess areas.

Shake spray can well and apply *very light* coats of paint to desired density of lettering. The lighter the application/the finer the spray with each pass of the can, the better. Do not be tempted to give that extra squirt, otherwise the paint will soak along the underside of the stencil and blur the letter edges. Carefully lift off the stencil and allow it and the sign to dry (half an hour) before further handling. Overspray and botch-ups should be quickly removed with a kerosene-soaked cloth.

Mounting:

2 x 50 mm galvanised coach screws per sign (90 cents each) with washers for fixing to posts; 8-gauge wire on corners for fences and gates.

Sign Placement:

Directional signs at track ends and intersections. Double-sided 'public way' signs can be placed on gates or fences crossing legal roads. If signs are occasionally damaged or removed replacement is cheap.

Posts for Signs

100 x 100 mm H4 treated pine 2.7 m long placed in 1 m hole; painted (white). Sign mounted 100 mm down from top. Cost per post approximately \$25.

All vehicle road-side posts placed so as to not obstruct vehicle movement on carriageway shoulders (an immediate and justifiable cause for gripes from the district council).

Fence Stile Specifications

Two uprights, either 100 x 100 mm or 100 x 75 mm H4 treated pine, 1 metre long; placed in 0.6 m deep holes approximately 0.8 m apart.

One 200 x 50 mm x 1 m H3 treated pine step, nailed and wired/stapled to uprights. Barbs removed from fence.

Cost per stile approximately \$23-\$27.

Marker Poles

Ideally 100 x 100 mm H4 treated posts 2.7 m long, one metre into ground. Cost per marker approximately \$25.

Otherwise go for something lighter such as 75 x 50 mm H3 treated pine if stock pressure will allow it. You can further treat the bottom metre plus of it yourself with a brush-on timber preservative. Cost approximately \$8 per marker plus two coats of a cheap multipurpose (white) paint. Acrylic is convenient for field application—approximately \$32 per 4 litres).

If you find that your marker poles disappear, or are damaged by stock, consider using existing fences. Painted key fence posts *that encroach on to the road reserve* can provide convenient directional markers. Paint is cheaper than poles!

D. A Country Code

(Adapted from 'A New Zealand Country Code'
published by the Nature Conservation Council)

Reproduction of this code, or an abbreviated version, in any promotional material and pamphlets would do much to nullify any criticism of irresponsible actions on your part as a promoter of public ways. It has been drawn up to provide some simple guide-lines to help keep the countryside a pleasant place to live and to recreate.

Respect the country way of life

Many peoples' livelihoods depend on their use of rural holdings. As far as possible try to fit in with farming operations. Often the farmer must leave their belongings in the open and the public are on trust. Courtesy requires that you ask permission before crossing private property, particularly with a gun or dog. The law deems you to be a trespasser if found on private property and are warned off. Avoid entry into obviously private areas—respect the occupant's privacy—their spatial requirements are generally greater than is the case in town. Do not walk through crops; walk around. Try to assist animals in difficulty, and if you cannot, tell the owner if known, or inform a neighbour.

Use of public ways

Although you are legally entitled to travel along public roads without requiring the consent of anyone, you should remain mindful of the limitations.

Your right of use is confined to the legal alignment of the road. As many fences do not always follow the legal boundaries, or are absent, you cannot necessarily be assured from features on the ground what the true alignment is. Legal road widths are variable too, ranging from one chain (20 metres) down. To be certain stick to obvious formations or to the line of markers and signs where provided.

When walking along public roads used by vehicles, where there is good visibility, keep to the right-hand side of the road facing oncoming traffic.

Leave gates as you find them

Leaving open a gate closed by the farmer can cause great damage to the management of stock and pasture, entailing extra work and inconvenience as well as loss of good-will. Closing a gate which has been left open may deprive animals of food and water. Leave gates as you find them, unless you have good reason to believe that someone else has been careless.

Avoid damaging fences

Fences are expensive assets, easily damaged. Do not climb over them if there is a gate or stile anywhere near. Go between wires rather than over if possible—this avoids scraping galvanising off the wires and shortening the life of the fence. If you must climb over do so at strainer posts where there is a stay to stand on or where the wires are tied off. Where no strainer is near, the safest and least damaging method is for you to put your foot on the wire hard against a post (not a batten) on the uphill side. If you have to climb over a gate do so at the hinge end.

Keep dogs under proper control

Your 'harmless' pet can become a sheep or wildlife killer if left uncontrolled even for a short time. Leave your dog at home during lambing or calving. Keep your dog on a leash, unless you are confident you can keep it under control. It is your legal responsibility to keep your dog off private property and to not allow it to worry stock or humans. Dogs are prohibited from wildlife reserves and other conservation lands.

Leave no litter

Carry home all potential rubbish—litter spoils the enjoyment of visitors and annoys those who live there. It can also be dangerous. Since litter generates litter, why not be public spirited and remove any other rubbish left on the site?

Take no risks with fire

Obey all fire notices and restrictions. Cigarettes and matches are hazards at any time. Do not light cooking fires without the permission of the landowner—you need this consent for camping anyhow. Completely douse camp-fires with water before you leave. Plantations, crops, gorse, dry grass, scrub, coastal vegetation, driftwood and wildlife areas are special risks. Never light a fire in a risk area under windy conditions, when sparks may fly, and never leave a fire or barbecue unattended—always have ample water on hand. Portable stoves are more convenient than fires, and generally safer.

Protect plants and animals

Ferns, flowers and trees give more pleasure to more people if left to grow. This is particularly important beside roads, tracks, and picnic places. Breeding areas for wildlife are particularly vulnerable to damaging disturbance—remember that wildlife, like human residents, need privacy and respect. Binoculars are a better alternative for viewing wildlife than approaching too closely.

[TENTH SCHEDULE

Sections 319 (h), 342

CONDITIONS AS TO STOPPING OF ROADS AND THE TEMPORARY PROHIBITION
OF TRAFFIC ON ROADS*Stopping of Roads*

1. The council shall prepare a plan of the road proposed to be stopped, together with an explanation as to 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.

2. On receipt of the Chief Surveyor's notice of approval and plan number the council shall open the plan for 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 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 Planning Tribunal.

6. The Planning Tribunal shall consider the plan, the council's explanation under clause 1 of this Schedule, and any objection made thereto by any person likely to suffer injury thereby, and confirm or reverse the decision of the council which shall be final and conclusive on all questions:

Provided that the Planning Tribunal shall not confirm the decision of the council unless satisfied that adequate access to the lands in the vicinity of the road is left or provided.

7. If the Planning Tribunal reverses the decision of the council, no proceedings shall be entertained by the Planning Tribunal for stopping the road for 2 years thereafter.

APPENDIX 1 continued:

8. If the Planning Tribunal 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.

Temporary Prohibition of Traffic

11. The council may close any road or part thereof to all traffic or any specified type of 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, or public function:

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

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 continued 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 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
- (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.

1965/63



THE TRANSPORT (VEHICULAR TRAFFIC ROAD CLOSURE)
REGULATIONS 1965

BERNARD FERGUSON, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 26th day of April
1965

Present:

THE RIGHT HON. KEITH HOLYOAKE, C.H., PRESIDING IN COUNCIL

PURSUANT to the Transport Act 1962, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title—These regulations may be cited as the Transport (Vehicular Traffic Road Closure) Regulations 1965.

2. Interpretation—In these regulations, unless the context otherwise requires—

“‘Accident compensation levy’ means a levy payable pursuant to section 98 of the Accident Compensation Act 1972.”

“‘Controlling authority’”, in relation to any road, means the Minister of Works, Board, local authority, or person or persons, as the case may be, having control over the road:

“‘Indemnity surcharge’ means the indemnity surcharge payable pursuant to Part VIA of the Transport Act 1962 (as inserted by section 7 of the Transport Amendment Act 1973).”

“‘Period of closure’”, in any case where it is proposed to close a road for more than one period, means the first period of closure: Expressions defined in the Transport Act 1962 have the meanings so defined.

“‘Road’ does not include any foreshore (as defined in section 2 (1) of the Harbours Act 1950).”

3. Controlling authority may close road—For the purpose of holding on any road any vehicle races or trials, or any processions, carnivals, celebrations, sporting events, or other special events, the controlling authority may, subject to the provisions of these regulations, close the road to ordinary vehicular traffic for a period or series of periods of not more than 12 hours each in any consecutive 24 hours.

4. Notice of intention to close road to be advertised—(1) At least 42 days before the proposed period of closure of any road, the controlling authority shall give public notice (hereinafter called the said

APPENDIX 2 continued:

1965/63 *Transport (Vehicular Traffic Road Closure) Regulations 1965*

notice) in form A in the Schedule hereto in at least one newspaper circulating in the locality in which the road is situated of its intention to close the road to ordinary vehicular traffic, with details of the purpose of the closure, the period or periods of closure, and the provision made for vehicular traffic which would otherwise be using the road, and shall therein call upon persons affected to lodge with the controlling authority any objections thereto.

(2) Any person affected by the closure of any road may lodge an objection thereto not later than 28 clear days before the proposed period of closure of the road.

5. Where no objections to closure received—If no objections are received within the prescribed time as a result of the said notice, the controlling authority may decide to close the road in accordance with the terms of the said notice, and, if it so decides, it shall, not later than 24 hours before the proposed period of closure, give further public notice in form B in the Schedule hereto in at least one newspaper circulating in the locality in which the road is situated of the closure thereof to ordinary vehicular traffic, together with the other particulars specified in that form.

6. Where objections to closure received—If any objections are received within the prescribed time as a result of the said notice, the controlling authority—

(a) Shall consider the objections so received; and

(b) If, after considering those objections, it decides to close the road in accordance with the terms of the said notice, shall, not later than 24 hours before the proposed period of closure, give further public notice in form B in the Schedule hereto in at least one newspaper circulating in the locality in which the road is situated of the closure thereof to ordinary vehicular traffic, together with the other particulars specified in that form.

7. Promoter to provide adequate insurance—A controlling authority shall not close any road under these regulations unless the authority is satisfied that the person or organisation promoting the vehicle races or trials, procession, carnival, celebration, sporting event, or other special event, as the case may be, has arranged adequate insurance against his or its liability to pay damages to any person in respect of any claim on account of the damage to property where the damage results from the holding of the vehicle races or trials, procession, carnival, celebration, sporting event, or other special event, as the case may be. In the case of any vehicle race or trial, the controlling authority must be satisfied that the only motor vehicles participating are vehicles in respect of which an accident compensation levy and an indemnity surcharge has been paid for the licensing year then current."

8. Permit to use closed road—As provision or part of the provision made for ordinary vehicular traffic that would otherwise use a road closed pursuant to these regulations, and also as provision for the holding of vehicular racing or other similar events on the road, the controlling authority may authorise the issue of a permit by any of its officers or by any constable or traffic officer which will authorise the person to

*Transport (Vehicular Traffic Road Closure) 1965/63
Regulations 1965*

whom the permit is issued to use a vehicle or vehicles on the road during the period or periods of closure, subject to any condition or conditions contained in the permit.

9. Powers of police and bylaws requiring permits not affected—These regulations shall in no way restrict the power of the police to maintain public order on roads, nor shall they authorise the holding on any road without the appropriate permit therefor of any vehicle race or trial or any procession, carnival, celebration, sporting event, or other special event for which a permit is required under any Act, regulation, or bylaw.

10. Certain enactments suspended—The provisions of the enactments and bylaws specified in the Second Schedule to these regulations shall not apply to any motor vehicle while taking part in any vehicle races or trials, or any procession, carnival, celebration, sporting event, or other special event, as the case may be, on any road that is for the time being closed pursuant to these regulations.

11. Offences—(1) Every person commits an offence who otherwise than in terms of a permit duly issued under regulation 8 hereof uses a road that is for the time being closed pursuant to these regulations.

(2) In a prosecution for any offence against these regulations, the production of copy of a newspaper containing the relevant notice in form B in the Schedule hereto shall be sufficient evidence that the requirements precedent to the closure of the road have been duly complied with by the controlling authority.

“(3) Any person who commits an offence against these regulations is liable to the penalties specified in subsection (1) of section 30 of the Transport Act 1962.”

12. Revocation—The Transport (Vehicular Traffic Road Closure) Regulations 1963* are hereby revoked.

*S.R. 1963/124

Transport (Vehicular Traffic Road Closure) Regulations 1965 1965/63

SECOND SCHEDULE

Reg. 10

ENACTMENTS AND BYLAWS NOT APPLYING ON ROADS CLOSED TO
ORDINARY VEHICULAR TRAFFIC

Enactment	Section or Regulation	Subject-matter of Enactment or Bylaw
The Transport Act 1962	7	Motor vehicles to be registered and to have registration plates and annual licences.
	52	Speed limit of 30 miles an hour in cities, boroughs, town districts, etc.
The Traffic Regulations 1956*	6	Keeping to left of road.
	7	Overtaking of vehicles generally.
	8	Overtaking at bends, intersections, or rises where middle lines marked.
	9	Overtaking at other places.
	10	Route of driving at intersections.
	12	Stopping at stop signs.
	12A	Intersections where give-way signs erected.
	26	Speed - General provisions.
Any bylaw under the Transport Act 1962	27	Speed - Limited speed zones.
	52	Warrants of fitness.
	..	Speed limits for motor vehicles.

T. J. SHERRARD,
Clerk of the Executive Council.

*S.R. 1956/217 (Reprinted with Amendments Nos. 1 to 8: S.R. 1963/157)
Amendment No. 9: S.R. 1963/224
Amendment No. 10: S.R. 1964/85
Amendment No. 11: S.R. 1964/119
Amendment No. 12: S.R. 1964/208
Amendment No. 13: S.R. 1965/21

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations re-enact, with some amendments, the Transport (Vehicular Road Closure) Regulations 1962.

The amendments are as follows:

- (a) Regulation 4 requires 42 days' notice of a proposed road closure to be given instead of 21 days' notice required by the existing regulations; and the period for lodging objections is extended from seven days to 14 days.
- (b) Regulation 6 omits the requirement for controlling authorities to obtain the consent of the Minister to closures in cases where objections are received. This omission is consequential on the provisions of section 14 of the Transport Amendment Act 1964.

APPENDIX 2 continued:

1965/63 Transport (Vehicular Traffic Road Closure) Regulations 1965

SCHEDULE

Reg. 4 Form A

PROPOSAL TO CLOSE ROAD(S) TO VEHICULAR TRAFFIC STREET(S)

PURSUANT to the Transport (Vehicular Traffic Road Closure) Regulations 1965, notice is hereby given that the [Name of controlling authority], for the purpose of [State purpose], proposes to close the following (road(s)) (street(s)) to ordinary vehicular traffic for the period(s) indicated hereunder.

During the proposed period(s) of closure the following provision will be made for ordinary vehicular traffic which would otherwise use the road(s) street(s):.....

Any person objecting to the proposals is called upon to lodge notice of his objection and grounds thereof in writing, before* [Date] at the office of the Council (Board) [or, as the case may require] at [Address]:

Road(s) street(s) proposed to be closed to ordinary vehicular traffic:.....

Period or periods of proposed closure:.....

[Seal of controlling authority, or signature of person or persons authenticating the notice—Town Clerk, County Clerk, etc.]

*The date to be inserted here shall be 28 clear days prior to the date of the closure.

Regs. 5, 6 Form B

CLOSURE OF ROAD(S) TO ORDINARY VEHICULAR TRAFFIC STREET(S)

PURSUANT to the Transport (Vehicular Traffic Road Closure) Regulations 1965, notice is hereby given that for the purpose of [State purpose] the following road (s) street(s) will be closed to ordinary vehicular traffic for the period(s) indicated hereunder.

During the period(s) of closure the following provision will be made for ordinary vehicular traffic which would otherwise use the road(s) street(s):

Period or periods of closure:.....

Alternative provision for ordinary vehicular traffic:.....

It will be an offence under the above regulations for any person otherwise than under authority of an authorised permit to use the road(s) street(s) for ordinary vehicular traffic during the period(s) of closure.

[Seal of controlling authority, or signature of person or persons authenticating the notice—Town Clerk, County Clerk, etc.]

APPENDIX 2 continued:

1965/63 *Transport (Vehicular Traffic Road Closure)*
Regulations 1965

- (c) Regulation 7 provides that no road shall be closed unless the controlling authority is satisfied that the organisation applying for the closure has taken out adequate public risk and property damage insurance.
- (d) Regulation 10 exempts motor vehicles taking part in events on closed roads from certain rules of the road, speed restrictions, registration and licensing, and the requirements as to warrants of fitness.
-

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 29 April 1965.

These regulations are administered in the Transport Department.

***(76) 1965 p. 322**

METRIC CONVERSION.

REFER: R. 3(a) of 1975/280:—

Second Schedule Item relating to s. 52 of the Transport Act 1962: "30 miles"—"50 kilometres".

SECOND SCHEDULE.

REFER: R. 138(5) of 1976/227. The

whole of the item relating to the Traffic Regulations 1956 has been omitted and replaced by an item relating to the Traffic Regulations 1976.

AMENDMENT REGULATIONS:—

Amendment No. 1. 1970/275.

Amendment No. 2. 1974/75.

Amendment No. 3. 1975/280.

Amendment No. 4. 1989/311.

1955/67



THE GATES AND CATTLESTOPS ORDER 1955

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

ORDER

1. This order may be cited as the Gates and Cattlestops Order 1955.
2. For the purposes of the said subsection (4) of section 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.

1955/67

Gates and Cattlestops Order 1955

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 $4\frac{1}{2}$ 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 $1\frac{1}{2}$ in.	$3\frac{1}{2}$ 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 $\frac{1}{2}$ in. diameter.

Dated at Wellington this 9th day of May 1955.

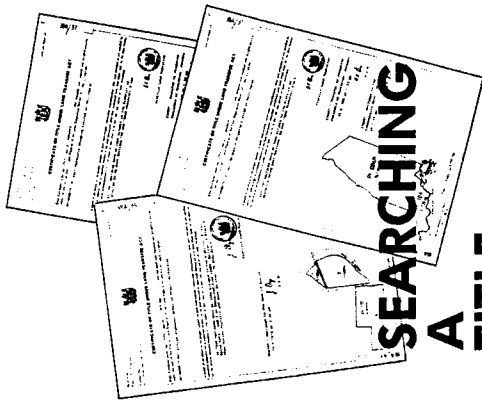
W. S. GOOSMAN,
Minister of Works.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 19 May 1955.

These regulations are administered in the Ministry of Works.

LAND REGISTRY OFFICE 2



A guide to help you obtain copies of titles and documents held by the Land Registry Offices of the Department of Justice

DEPARTMENT OF
JUSTICE
NEW ZEALAND

All privately owned land in New Zealand is subject to the Land Transfer Act 1952. This Act sets down the method of creating and terminating property rights in land, records title to land and gives a guarantee of title by the State.

A certificate of title to a piece of land is the record detailing the property rights concerning that land. It provides the following information:

- the current and previous owners of the land;
- the legal description and (usually) a diagram of the land;
- a summary of other interests in the land which are included in documents registered against the title.

The documents listed on the certificate of title may include mortgages, leases, various types of charges, easements and restrictions which affect the land in the following way:

- eg - The land could be subject to easements such as rights of way, or rights to convey water, drainage, power and telephone.
- Another person or group may have an interest in the land. This could be a monetary interest under a mortgage or may involve conditions or restrictions regarding the use of the land, or building on the land.

Certificates of title and the documents noted on them, are held in the Land Registry Office in the district where the land is situated, and are open to public search. Copies of certificates of title are at present available for a fee of \$3.00 or the original may be inspected for a fee of \$6.00. Documents may be inspected free of charge and can be photocopied for a small fee.

TO OBTAIN A COPY OF THE CERTIFICATE OF TITLE
You will need to know the certificate of title ("CT") number

which can be obtained from the indexes in the Search Room. If you know the legal description of the land, the certificate of title number is easy to find. The legal description will be shown on the Rate Demand for the property.

If you only know the address, you can look at computer printouts in the Search Room; these list properties alphabetically by street names and number. Against each listing is the name of the owner and the legal description of the land.

The legal description will be written in one of several ways and this will tell you which index to use to obtain the certificate of title number.

TYPES OF INDEX

Deposited Plan (DP) Index
eg. Lot 3 DP 5544 (that means: Lot 3 on Deposited Plan number 5544).

This index lists deposited plans in numerical order, and the lots they contain. Beside each lot number is the certificate of title number.

Township Index

eg. Section 43 Maori Township
Section 26 Matkowi Settlement.
This alphabetical index is of settlements and subdivisions in rural areas and city outskirts, with the certificate of title number noted against each section.

Rural Index or Survey District Index

eg. Section 22 Block IV Hawksbury Survey District
This is an alphabetical and numerical list.

Maori Index

eg. Manguinoka IIA.

APPENDIX 4. 'Searching a title'.

This is an alphabetical and numerical list of Maori land. In a few cases, the number of land blocks dating back to very early times vary between Land Registry Offices.

- eg - In the Auckland district office there will also be a parish index and a grant index.
- The Nelson office has a squares index.
- Several offices have a district index.

Once you have the CT number, fill out the required details on a search coupon. These are purchased at the Land Registry Office. You present the coupon at the search counter. If you want only to look at the title and do not want a photocopy of it you may purchase an access coupon.

The current title

The copy of the certificate of title will be the current one for the piece of land being searched. The CT number will be at the top right hand corner.

eg. Volume 362, folio 263
CT 15B/1437.

If you get a photocopy, it is a good idea to check that the information is clear on it.

Hand-writing on older titles can be hard to read.

Colour used in diagrams won't come out on the copy.

The paper used to produce the older titles was larger, so on the reduced copy you get, the diagram will not be to the stated scale.

Remember too that the name of the street shown on the title diagram may have changed since the title was issued.

Previous titles

The current certificate of title may be all that you want but there will be earlier certificates of title which refer to the same piece of land:

APPENDIX 4 continued:

eg - If the previous title form has been filled up and a new title issued;
 - If the land was part of a larger block which was subdivided or a part of it was sold.

It is possible to trace the history of a piece of land back through the plans by searching the previous certificates of title. Each time a new title is issued the previous title is either wholly or partly cancelled.

The number of the previous title is shown at the top left hand corner of the current title.

INSPECTION OF DOCUMENTS

If you want to look at any of the documents listed on the certificate of title, these are available at the Documents Search counter.

This list of "memorials" on the certificate of title shows the type and number of each document.

eg. transfer 1092011
 mortgage 1692011
 lease 2251071

You cannot take documents out of the document room but there is a coin-operated photocopier for public use.

INFORMATION AVAILABLE IF CERTIFICATE OF TITLE IS UNAVAILABLE FOR SEARCHING

If the certificate of title is not available for searching, a copy of the Automated Journal may be bought for the present fee of \$500. The Automated Journal contains details of any documents that have been lodged for registration but have not yet been registered against the certificate of title.

COMPUTERISATION

The Land and Deeds division has a series of computer projects

underway. They will ultimately lead to the introduction of a fully computerised title system. This includes the development of automated indexes and provision for remote access to the computer system. These projects are designed to allow for a link to be built to a central computerised land information system.

OTHER SOURCES OF INFORMATION

The Land Registry Office is concerned with title to land and the documents, including plans, that are summarised on the certificate of title.

Depending on the purpose of your search, you may need to gather information from other sources.

Department of Survey and Land Information offices hold a variety of maps and plans.

Local council offices have information on planning restrictions, zoning, building requirements, drainage rights, any outstanding rate payable, land tax, etc.

The Valuation Department holds data concerning the value of land and property.

COMMON LEGAL TERMS EXPLAINED

caveat a warning notice that the person (or group) claims an interest in the land.

covenant an agreement where a person promises to give, do or not do something for another person on their land.

easement a right enjoyed by the owner over neighbouring property, eg water rights, right of way.

Encumbrance (i) a form of mortgage (ii) a burden on the land, eg building line restriction.

Instrument a document, map, or plan that is relevant to dealings with the land, eg lease, covenant.

Lease possession of land by the lease holder (tenant) for a fixed time and under certain conditions.

Memorial the name given to an entry on the certificate of title.

Mortgage a charge over the property to secure the repayment of a loan.

Proclamation an official gazetted notice. Usually the Crown or local body acquires land which was the subject of a notice.

Transfer a document recording the sale of land.

Transmission obtaining title to an interest in land due to certain provisions in the law, eg death of the owner.

FURTHER INFORMATION

If any further information is required please contact your local district office.

NORTH AUCKLAND
 Level 2
 1000 Great North Road
 Auckland

SOUTH AUCKLAND
 1st Floor
 1000 Great North Road
 Auckland

HAMILTON
 1st Floor
 1000 Great North Road
 Hamilton

TAIRĀPŌHĀ
 1st Floor
 1000 Great North Road
 Tairāpohā

WESTLAND
 1st Floor
 1000 Great North Road
 Westland

Otago
 1st Floor
 1000 Great North Road
 Otago

Bay of Plenty
 1st Floor
 1000 Great North Road
 Bay of Plenty

Waikato
 1st Floor
 1000 Great North Road
 Waikato

Manawatu
 1st Floor
 1000 Great North Road
 Manawatu

Tairāpohā
 1st Floor
 1000 Great North Road
 Tairāpohā

Canterbury
 1st Floor
 1000 Great North Road
 Canterbury

Nelson
 1st Floor
 1000 Great North Road
 Nelson

Marlborough
 1st Floor
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 Marlborough

Westland
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Otago
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Bay of Plenty
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Waikato
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Marlborough
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 Marlborough

Westland
 1st Floor
 1000 Great North Road
 Westland

Otago
 1st Floor
 1000 Great North Road
 Otago

Bay of Plenty
 1st Floor
 1000 Great North Road
 Bay of Plenty

Waikato
 1st Floor
 1000 Great North Road
 Waikato

APPENDIX 5.

Federated Farmers' legal opinion on draft of Section A of this guide.



FEDERATED FARMERS OF NEW ZEALAND (INC.)

Agriculture House, 12 Johnston Street, P.O. Box 715, Wellington. Telephone (04) 737-269 Fax (04) 731-081

6 June 1990

Mr W Ramsay
c/- Federated Farmers
Otago Province
P O Box 5242
DUNEDIN

FAX : (024) 741-087

Dear Mr Ramsay

RE : LEGAL ROADS

Thank you for forwarding the documentation relating to the above matter to me.

The document entitled "Everybody's Guide to Road Reserves" gives, what I believe, is an accurate legal disposition of some aspects of the law relating to roads.

If you wish to test the validity of Mr Mason's claims however in respect of your membership's particular circumstances, you must first establish that what Mr Mason refers to as "designated" or "paper" roads are, in fact, and in law, such. This after all is the foundation upon which these claims are made. To determine the status of these roads it would be necessary to inspect the District Scheme and the relevant deposited plans held by the District Land Registrar.

If, following such an inspection, it is found that these are not roads pursuant to the Local Government Act (LGA) Mr Mason's arguments are irrelevant. Conversely if its found that they are roads pursuant to the LGA Mr Mason's claims have substance. In this event consideration may be given to requesting the Council to "stop" the road where landowners are not happy with the exercise of the public rights to access.

If you have any further queries in respect of this matter do not hesitate to contact me.

Yours sincerely

Michael Smith
LEGAL ADVISER

Corrigendum to

*“Public Roads: A Guide to Rights of Access to
the Countryside”*

Appendix 1 page 36

Tenth Schedule Local Government Act 1974
Stopping of Roads

(As amended by Eighth Schedule Resource Management Act 1991).

Clause 1 amended to read—

“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 of, showing the lands through which it is proposed to pass, and the owners and occupiers of those lands as 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. The plan shall separately show any area of esplanade reserve which will become vested in council under section 345 (3) of this Act.”

Clause 6 repealed and substituted by—

“The Planning Tribunal 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.”

New clause 6 reduces the future applicability of the Clause 6 discussion on pages 12 and 13.

Addendum

The Resource Management Act 1991 came into force on 1 October 1991.

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Bruce Mason is Researcher for
the PLC and a Trustee of the
Otago Peninsula Walkers

PLC Member Bodies

Federated Mountain Clubs
NZ Fish & Game Council
Royal Forest & Bird Protection Society

*"Working to protect nature and
foster recreation on New Zealand's
public lands, waterways, and seacoast"*
