

Public Roads — A Users' Guide

The key concept behind the law of highways is *the right of passage*. Your rights, and limitations on your actions, and those of administering district councils, hinge on this concept.

Whether a public road is formed or unformed (including so-called 'paper roads') has no bearing on their legal status, or on your rights of use. There is the same right of passage.

New Zealand public roads are strips of land normally 20 metres wide with ownership vested in district councils. Adjoining land owners have the same rights of use as members of the general public, plus a right of 'frontage' (access) to their property along their legal boundary with the road. They are not 'THE OWNERS' of public roads, as frequently asserted or implied.

The following advice reflects current New Zealand statutory and common law. The direct-actions noted below have been repeatedly 'field-tested' without any legal liabilities falling on the practitioners.

What you can do—

- each and every member of the public can *assert their right to pass and repass without hindrance*, by whatever means they choose (provided it doesn't damage the surface).
- do other things related to passage, e.g., parking, resting etc.
- remove 'public nuisances'*[†], erected without statutory authority, sufficient to enable your passage.

* Recommend leaving to one side without unnecessary damage. Not every encroachment amounts to a 'nuisance'—needs to be 'an appreciable interference' with, or an obstruction to, your rights of passage. What amounts to 'appreciable interference' is a matter of fact on a case by case basis.

† Meaning no more than what is necessary.

NOTE: There may be liability if stock escapes on to vehicular roads and causes a traffic hazard. If a risk, we recommend removing fencing when stock are absent then immediately notifying owner in writing that fencing is not stock-proof—then their liability.

- remove vegetation sufficient for passage (ie. clear tracks).
- as an adversely affected member of the public, sue the person responsible for a nuisance, and the district council if it authorised it.

What you cannot do—

- occupy or obstruct a road to the exclusion of the public.
- encroach on a road by any building, fence, ditch, or other obstacle, or plant any tree or scrub, without authorisation from the district council.
- dig up, remove, or alter in any way the soil or surface or scarp or a road, without authorisation from the council.
- damage or remove or alter any gate or cattle stop lawfully erected.

What you must do—

- leave a lawfully erected gate in the position (whether open or closed) in which it is found.

What district councils can do—

- close roads temporarily to traffic or any specified type of traffic with public notification, for reasons of road construction or repair, resolution of traffic problems, when public disorder exists or is anticipated, for temporary diversion to other roads, for exhibitions, fairs, public functions etc., and to motor vehicle use, or any class of motor vehicle, when climatic conditions may cause road damage.
- close roads temporarily (for motor races or other special events) to vehicular traffic, with public notification and right of objection.
- 'stop' or permanently close roads after a public notification and objection procedure (watch out for public notices in local newspaper). Council decisions to 'stop' roads are subject to a right of appeal to the Planning Tribunal. The key determinate is the need for the road (e.g., provides sole legal (not necessarily practical) access to individual allotments), not any perceived need for 'stopping', such as claimed undesirability of public access.
- grant leases of airspaces above roads, provided that sufficient airspace remains for the free and unobstructed passage of vehicles and pedestrians.
- permit in writing the erection of a swing gate with a 'Public Road' sign, or a cattle stop, or both across a road, where it is not practical or reasonable to fence the boundaries of the road.
- sue any person in respect of a nuisance arising from an unreasonable interference with the public right of passage.
- compel or recover the cost of removal of an obstruction.

What district councils cannot do—

- create a nuisance, or deprive any person of any right or remedy they would have against the council or any other person in respect of any such nuisance.
- lawfully authorise obstructions (e.g., fences, stock yards, buildings) across roads.
- grant rights of use or occupation that create a public nuisance or interfere with public rights.

What district councils are liable for—

- obstructions it has authorised when they become nuisances, should they become aware of them.
- permitting an obstruction it has authorised, once it becomes a nuisance, to remain on a road or otherwise fails to abate the nuisance.

What district councils are not liable for—

- spending money on road construction or maintenance (a Council discretion).
- obstructions to roads of which it has no knowledge.

Caution

1. This is a summary and not the complete law relating to roads. Consult a lawyer.
2. This advice is dependent on the road being properly dedicated.
3. You must be certain you are on the correct alignment.

For a fuller explanation of legal rights and how to research the status and location of roads see *Public Roads—A Guide to Rights of Access to the Countryside*. Available from Public Access New Zealand, RD 1, Omakau 9182, for \$11, postage inclusive