



Adopted 2 December 2021

Replaces 7 December 2017 Unformed Legal Roads Policy

Review date: 2 December 2026

Background

The Hurunui District has a large network of approximately 2,500 km of unformed legal road parcels. Sections 315 – 317 of the Local Government Act 1974 provide that all unformed legal roads within the district are vested in, and controlled by, the Council.

Purpose

To provide a consistent and transparent approach to the management, use, stopping and formation of unformed legal roads.

Scope

The policy applies to any unformed legal road.

It applies in addition to statutory provisions that apply to unformed legal roads.¹

There are also a range of other Council policies and bylaws that apply to unformed legal roads and should be read in conjunction with this policy, including the Dog Control Bylaw 2018, Speed Limits Bylaw and Register of Speed Limits 2020, and Public Places Bylaw 2014.

Principles

1. The Council has no obligation to maintain or develop unformed legal roads.
2. The public has a right of passage over unformed legal roads, but must not damage or alter the road surface.

Policies

1. Overarching Approach
 - 1.1. The Council will follow its legal requirements in the management of unformed legal roads. Where any part of this policy is not consistent with the Council's legal obligations, the latter override this policy.
 - 1.2. The Council is not obligated to, and does not generally intend to:
 - 1.2.1. maintain or repair damage to any unformed legal road;
 - 1.2.2. form or improve unformed legal roads; or
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¹ Such as the Local Government Act 1974, Part 21, the Public Works Act 1981, Gates and Cattle Stops Order 1955, Land Transport Act 1998, Land Transport (Road User) Rule 2004, Summary of Offences Act 1981, s 22, Marine and Coastal Area (Takutai Moana) Act 2011, s 14.

1.2.3. signpost or otherwise mark unformed legal roads.

2. Encroachments

- 2.1. Where there is an unauthorised encroachment (but excluding gates and cattle stops, except as specified in 2.2 below) on any unformed legal road, the Council:
- 2.1.1. will investigate complaints about encroachments;
 - 2.1.2. will first attempt to resolve encroachments through voluntary removal, licences to occupy, or road stopping (as appropriate) before considering legal action;
 - 2.1.3. may remove, or require removal of, unauthorised encroachments that obstruct or impede public access, at the cost of the party responsible, unless exceptional circumstances exist in relation to the encroachment (including a public benefit).
- 2.2. In relation to existing gates and cattle stops, the Council acknowledges that many land owners/occupiers adjoining unformed legal roads have historically been using the roads for grazing or other farming activities, and that this may have included the erection of gates or cattle stops. The Council will not generally require retrospective approval for any such gates or cattle stops, but may, in individual circumstances, apply 2.1.1, 2.1.2 and/or 2.1.3 above.
- 2.3. An adjoining land owner/occupier must apply to the Council to erect any new fence, gate or cattle stop across an unformed legal road, in accordance with section 344 or 357 of the Local Government Act 1974.
- 2.4. Where a gate or cattle stop (whether new or existing) is erected across an unformed legal road, a sign must be affixed to the gate / cattle stop indicating it is a public road.
- 2.5. An unformed legal road may not be used for storage of any kind, or the long term parking of any vehicles.

3. Vehicles

- 3.1. While there is no specific statutory right to use a motor vehicle on any road, where the terrain permits, vehicles may be used on unformed legal roads, unless regulated through a bylaw or other enactment, and subject to the requirement for the use of vehicles on unformed legal roads to not damage the surface of the road.
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- 3.2. Unformed legal roads are considered to be “shared zones” – for use by both pedestrians and vehicles, for the purpose of Land Transport (Road User) Rules 2004, meaning that vehicles must give way to pedestrians, but pedestrians must not unduly impede the passage of any vehicle.
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4. Expectations of Road Users

- 4.1. The Council expects the users of unformed legal roads to be aware of the legal obligations relating to these roads. The Council will consider enforcement action where road users breach these obligations. Such obligations include, but are not limited to:
- 4.1.1. Not causing damage to, or modifying, the surface of the road. This includes taking into account factors such as weather condition and mode of transport used that may cause the road to be more susceptible to damage.
 - 4.1.2. Abiding by all relevant road rules.
 - 4.1.3. Not driving a motor vehicle, or causing a motor vehicle to be driven, at a speed or in a manner which, having regard to all the circumstances is, or might be, dangerous to the public or to a person.
 - 4.1.4. Not trespassing onto private property that adjoining unformed legal roads.
 - 4.1.5. Adhering to the Council’s Dog Control Policy and Bylaw.
 - 4.1.6. With respect to hunting, adhering to firearms regulations.
- 4.2. In addition to the above, the Council has the following expectations of road users:
- 4.2.1. That they exercise proper and proportionate care on unformed legal roads, including respect of the surrounding environment and safety of other users and livestock.
 - 4.2.2. That they do not endanger or cause distress to livestock or damage any property within the unformed legal road corridor.
 - 4.2.3. When utilising a vehicle on an unformed legal road, road users should drive to the conditions and not leave a vehicle unattended where it prevents or limits the passage of other road users.
 - 4.2.4. That they adhere to the principles and responsibilities set out in the New Zealand Outdoor Access Code (prepared by the
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- 4.2.5. That those utilising unformed legal roads for hunting abide by the New Zealand Mountain Safety Council's Hunting Outdoor Recreation Activity Guide.

5. Licences to Occupy

- 5.1. The Council acknowledges that many land owners/occupiers adjoining unformed legal roads have historically been using the roads for grazing or other farming activities, and that often use of unformed legal roads in this manner is mutually beneficial for the owner/occupier, public and Council as the road surface is well-maintained. The Council will not generally require such agreements to be formalised through a licence to occupy, but may, in individual circumstances require that a formal licence to occupy is applied for.
- 5.2. Applications for a licence to occupy must be made using the Council's form and are subject to the payment of the fee prescribed in the Council's Fees and Charges.
- 5.3. Applications made for licence to occupy will be considered on a case-by-case basis. However, applications that would exclude public access will not be accepted.
- 5.4. The first preference for licences to occupy are given to the adjoining land owners/occupiers of an unformed legal road parcel. Where the applicant is not the adjoining land owner/occupier, notice will be given to the adjoining owner(s)/occupier(s), of the application, giving them 20 working days to respond with their view.
- 5.5. Where a licence to occupy is sought for a section of unformed legal road that adjoins two or more properties, notice will be given to the other adjoining land owner(s)/occupier(s), of the application, giving them 20 working days respond with their view.
- 5.6. Where more than one adjoining land owner/occupier wish to use the same section of unformed legal road along a shared boundary, the Council will encourage both parties to agree on the licence arrangements. Where agreement is not reached, the Council will use its discretion as to how the occupation is divided.
- 5.7. Adjoining land owners/occupiers grazing stock on unformed legal roads (whether formally or informally) are responsible for maintaining the surface of the road to the same or better condition than prior to the grazing occurring, and controlling all noxious pests and weeds, including as required
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under the Canterbury Regional Council Pest Management Plan.

- 5.8. The Council will not generally seek compensation for grazing licences where mutual benefit is obtained, however may do so if it is considered appropriate.
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6. Pest Management

- 6.1. The land owner/occupier adjoining any unformed legal road may undertake minor pest or weed clearance work in order to enable access over the road.
- 6.2. Council approval is required for other pest or weed clearance work.
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7. Fires

- 7.1. The Council does not permit the lighting of fires on unformed legal roads due to the risk posed to other road users, the road surface and adjoining property and vegetation.
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8. Stopping

- 8.1. Adjoining land owners/occupiers may apply to Council to stop an unformed legal road. Applications are required to be in the prescribed form or in writing, and will be subject to the fee prescribed in the Council's Fees and Charges. All costs involved with the proposal must be met by the applicant.
- 8.2. Where the Council proposes to stop a road, it will generally follow the Local Government Act 1974, section 342 process. The Public Works Act 1981, section 116 procedure will only be used in exceptional circumstances where it is deemed to be in the public's interest to do so.
- 8.3. Where there is an unauthorised permanent encroachment on any unformed legal road, the Council will consider road stopping where exceptional circumstances exist. This consideration will include assessment of alternative public access options and any possible future use of the road. The party responsible for the encroachment will be expected to purchase the stopped road for market value, and meet all costs associated with the road stopping, including those associated with assessment of alternate public access options.
- 8.4. In considering applications to stop an unformed legal road, the Council will evaluate the application against:
- 8.4.1. the public access options available, including whether public access is
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- proposed to be surrendered in the application;
 - 8.4.2. the current level of use of the road;
 - 8.4.3. intended or proposed future uses – e.g. to service developments, connect existing roads or provide linkages;
 - 8.4.4. potential alternative future uses – e.g. walk- or cycle-ways, public works, amenity, greenspace or conservation uses;
 - 8.4.5. any encumbrances in the road unable to be protected by easements;
 - 8.4.6. any safety concerns raised by the proposal;
 - 8.4.7. existing or anticipated infrastructure that is better protected and managed through ownership; and
 - 8.4.8. any other matter the Council considers relevant
- 8.5. The Council will consider land swaps when considering options involving road alignments.
- 8.6. Once a road has been stopped, the Council will determine how the land will be used. This includes:
- 8.6.1. Noting that generally, the purpose for stopping a road will determine its use or disposal;
 - 8.6.2. Sale of land is subject to the Council's Sale of Property Policy; and
 - 8.6.3. Stopped roads adjoining water bodies legally become esplanade reserves vested in Council.
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9. Formation

- 9.1. Any person or group may apply to the Council to form an unformed legal road. Applications are required to be in the prescribed form or in writing, and will be subject to any applicable fee's.
 - 9.2. The Council has full discretion to approve or decline applications regarding formation.
 - 9.3. Where an application is approved, the Council may impose any conditions on the approval that it sees fit. At a minimum, these will include a requirement to submit the formation design for Council approval prior to any physical works occurring, and requirements for inspections to be undertaken of the physical works.
 - 9.4. The applicant is responsible for managing and funding the design and physical works, including
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engagement of any consultants or technical experts.

9.5. All costs (including council inspection costs, notifications and system updates), contracts and arrangements (e.g. design, project management, supervision, physical works) are the applicant's responsibility.

9.6. Any work in the formed road corridor requires an approved Corridor Access Request.

Note: Formation of an unformed legal road submitted as part of a resource consent process is not governed by this policy.

Definitions

Council means the Hurunui District Council.

Encroachment means any physical obstruction over, above or below an unformed legal road which does not have Council authorisation (generally in the form of a licence to occupy or similar form of express, written approval). Encroachments will include all structures, irrespective of the extent to which public access is compromised.

Formation means construction of the road and includes gravelling, metalling, sealing and/or permanently surfacing the road. Formation is also used to refer to the construction of other passage ways, such as a walkway, cycleway, or bridle path.

Licence means a personal permission to enter the land and use it for specified purposes which does not confer any estate or interest in the land on the licensee. Licences the Council may grant include grazing or encroachment licences. Generally, such licences will include a condition that public access is maintained at all times.

Motor vehicle has the same meaning as under section 2 of the Land Transport Act 1998.

Stopping means the formal process of removing the legal status of road from a formed or unformed road and creating a fee simple title over that parcel of land.

Unformed legal road means any road originally laid out over Crown land –

- and marked on the ground and on record maps; or
- under the authority of any Act or Ordinance, on any Crown grant record map, but not marked or laid out on the ground;

where the road has not been constructed by any gravelling, metalling, sealing, or permanent surfacing, and is neither substantially formed or made for the use of the public.

Vehicle has the same meaning as under section 2 of the Land Transport Act 1998.
