



**MARLBOROUGH
DISTRICT COUNCIL**

**UNFORMED LEGAL ROADS
MANAGEMENT POLICY**

August 2024

Contents

PURPOSE AND OBJECTIVE	3
UNFORMED LEGAL ROAD	3
STATUTORY PROVISIONS.....	3
GUIDING PRINCIPLES.....	4
MANAGEMENT OF UNFORMED ROADS.....	4
1.1 Public right of passage along Unformed Roads	4
1.2 Identifying Unformed Roads	5
1.3 Encroachments.....	5
1.4 Damage, Repairs and Maintenance	6
1.5 Livestock Including Grazing, Cattle Stops, Fences and Swing Gates	6
1.6 Use of Unformed Roads by Motor Vehicles	8
RECREATION, DOGS, HORSES AND HUNTING	9
1.7 Walking Access.....	9
1.8 Dogs	9
1.9 Horse Riding	9
1.10 Mountain Bikes, Motorbikes and Four-Wheel Drives	9
6.5 Hunting	10
RISK OF FIRE.....	10
TREES, CROPS AND VEGETATION	10
STOPPING OF UNFORMED ROADS	11
FORMATION OF UNFORMED ROADS	12
ENFORCEMENT.....	13
MONITORING AND REVIEW	13

Purpose and Objective

The purpose of the Unformed Legal Roads Management Policy (**the Policy**) is to provide guiding principles to inform Marlborough District Council (**Council**) staff and its agents on issues arising from the use of Unformed Legal Roads (**Unformed Roads**). The Policy also provides guidance to public users.

Marlborough Roads, as an agent of Council, is responsible for the management of Marlborough's roading network on behalf of the Council. The Policy creates a consistent and proactive approach between Marlborough Roads and the Council to effectively manage Unformed Roads.

Unformed Roads can be a concern for property owners and local authorities. These areas, officially designated as roads, are not fully constructed, or maintained. Unformed Roads do not meet the standards of a fully functional and safe road.

Unformed Legal Road

An Unformed Road is:

- Any road originally laid out over Crown land and marked on group and record maps.
- Any road originally laid out on Crown land 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 Council with gravel, metal, seal, or permanent surfacing, or by a private individual and accepted by Council to meeting their standards and is neither substantially formed nor made for the use of the public.

Unformed Roads are not always readily identifiable. Most have never been developed due to access requirements, impractical topography, lack of funding priority or unsuitable environmental conditions. Ownership lies with either the Council or the Crown. Marlborough Roads has powers to control Unformed Roads as an agent to Council who is the road controlling authority.

Unformed Roads have the same status as legal roads:

- Statutory road controlling authority powers remain exercisable.
- Standard road rules apply to users.
- The public have the right to access and use them.
- Adjoining landowners are obliged to respect public use.
- Utility service providers have the right to use Unformed Roads for their infrastructure.
- Public are expected to respect adjoining landowner, especially livestock.

Statutory Provisions

The functions and powers of Council are set out in the **Local Government Act 2002**.

Other relevant statutory provisions for the use of Unformed Roads include:

- **Local Government Act 1974 (the Act)** – Part 21 contains much of the regulatory regime that applies to roads.

- **Public Works Act 1981** – Provides for issuing licences for occupation of roads and allows for the stopping of roads by Ministerial decision.
- **Land Transport Act 1998** – Governs the control and use of roads and allows for the making of bylaws and the rules for traffic behaviour on roads.
- **Land Transport Road User Rule 2004** – Sets the requirements for the use of roads.
- **Summary of Offences Act 1981 (s 22)** – Makes it an offence to obstruct a public way.
- **Walking Access Act 2008** – Established by Herenga ā Nuku/Outdoor Access Commission Aotearoa, to safeguard and enhance opportunities for public walking access to the great outdoors, while respecting private landholders' rights and property.

Guiding Principles

The Policy sets out Council and Marlborough Roads approach to the control and management of Unformed Roads in the Marlborough region, based on the following five principles:

- **Public right of passage** – The public has the right of passage over any Unformed Road. Care must be taken to ensure no damage to the surface of the unformed road or trespass onto adjoining private property.
- **Adjoining private property rights** – Adjoining landowners have frontage rights to access Unformed Roads which are along the length of their property boundary. Landowners desire privacy and safety of their possessions, including their stock.
- **No right of occupation** – Adjoining landholders have no right to occupy any Unformed Roads and may not impede the use of them by the public in any way without written permission from the Council.
- **No maintenance or construction obligation** – Council is under no obligation to maintain or construct Unformed Roads.
- **Environmental protection and road user safety measures** – Council has the right to restrict traffic movements on Unformed Roads for the purpose of protecting the environment, the road and adjoining land, and the safety of road use.

Management of Unformed Roads

1.1 Public right of passage along Unformed Roads

The public has the right of free passage. However, Unformed Roads may not be available for passage due to the condition of the surface, unsuitable terrain, dense vegetation, and other natural obstructions.

Rights of free passage must be balanced against potential damage to the environment, and Council and its agents have the right to restrict vehicle movements on Unformed Roads for the purpose of protection the environment or the public.

Council Principles:

- Council acknowledges the public has a right of free passage along any Unformed Roads.
- Council has no obligation to construct or improve Unformed Roads.

- Council assumes no liability for the condition, or the suitability of any unauthorised activity carried out on any Unformed Road.
- Road users must accept the condition of the road as they find it. They should take proper care of the environment and must not cause damage or modify the surface of the Unformed Roads.
- Road users must not trespass onto adjoining property. They must not endanger or cause distress to any adjoining landholders' livestock or damage any property (this includes stock and property that may have lawful authority to be on the Unformed Roads).
- Council recommends the [New Zealand Outdoor Access Code \(the Code\)](#), produced by Herenega A Nuku/Outdoor Access Commission Aotearoa, for users of Unformed Roads.
- Council may temporarily restrict access to Unformed Roads under certain circumstances, including public safety and protection of the environment.

1.2 Identifying Unformed Roads

The boundaries of Unformed Roads and adjoining private land are difficult to identify. Most do not follow terrain-based access routes.

Herenega A Nuku/Outdoor Access Commissions Aotearoas online public access mapping system, the [Outdoor Access Map](#), is available to assist the public in identifying land open to recreational access, including Unformed Roads.

The Outdoor Access Map is a free, online tool which includes high quality topographic maps and aerial imagery, overlaid with recreation information provided by partner organisations.

Council Principles

- Information signage at the entrance point to popular, accessible Unformed Roads may be approved by Council where the number of users warrants signage information.
- Boundary stakes may be placed along Unformed Roads by the adjoining landowners or users subject to written approval from Council.

1.3 Encroachments

Road encroachments are not allowed, although exceptions may be considered by the Council on a case-by-case basis. Road encroachments can occur on the surface, beneath (subsoil) or above (airspace) the legal road corridor.

Granting a licence to occupy the road surface or a lease for airspace or subsoil will be subject to various conditions and restrictions to protect public usage.

There are many situations where Unformed Roads have been partially or fully obstructed by the placement of fence lines, locked gates, trees, buildings, and other structures. These obstructions are illegal. Council's policy is that these obstructions are generally removed to preserve right of public access.

There are many situations where Unformed Roads have been partially or fully obstructed by the placement of fence lines, locked gates, tree, buildings, and other structures. When a complaint is received or information is obtained about such obstruction, the Council's approach is to consider what appropriate action, if any, is necessary with reliance on the obligation to preserve the rights of public access. The Council may ask landowners to remove these obstructions to ensure the obligations under the Act are met.

Council Principles

- Private use of an Unformed Roads (solely for private benefit) will not be permitted unless there are exceptional circumstances or an element of public benefit.
- Council will generally not consider approving road encroachments where access or future access is unduly compromised.
- Complaints regarding existing encroachment on unformed roads will be investigated and assessed by Council for removal on a case-by-case basis. Discretion for removal of encroachments is held by Council.

1.4 Damage, Repairs and Maintenance

Council is under no legal obligation to maintain Unformed Roads. However, if Council undertakes construction work, such as a culvert or bridge on a road that is otherwise generally unformed, it has a duty of reasonable care in that construction. Further, Council has a duty of on-going reasonable observation of that work to ensure any dangerous change in condition is discovered and remedied.

Causing damage to the surface of Unformed Roads is an offence under the Act. Council accepts that common uses of an Unformed Road may cause damage to the surface of the road. The prohibition on damaging a road must be balanced against the right to use the road.

Road users must take care to minimise damage to the road. Road users must also consider that factors, like weather conditions, may cause the Unformed Road to be damaged easier.

Council Principles

- Council generally has no obligations or liability to maintain Unformed Roads except for any structures it constructed or is responsible for.
- Council accepts that minor wear and tear will occur from ordinary use of an Unformed Roads and will not consider this damage to the road.
- Intentional or unintentional damage caused by public misuse, recklessness, vehicle damage from racing, overuse or wheel spins or significant stock path erosion may be considered damage to the road.
- Deliberately digging up or landscaping an Unformed Road is a form of damage and must not be undertaken without written approval.

1.5 Livestock Including Grazing, Cattle Stops, Fences and Swing Gates

1.5.1 Grazing and Farming

Unformed Roads may be used for farming where they adjoin private land or where a grazing licence is held. The primary purpose of a road, to travel from point to point, remains paramount. It is highly recommended for members of the public intending to use an Unformed Road to inform a farmer of their intentions.

Grazing on Unformed Roads has been carried out without the need for a formalised grazing licence. Currently, Council will not insist on formal licences. However, there may be advantages in formalising a licence for grazing if issues arise in relation to a particular road. Issues could include complaints from public and/or adjoining landowners.

Private adjoining landowners can apply for a grazing licence or other farming related activities from Council. These applications will be considered on a case-by-case basis.

If an Unformed Road forms the boundary between neighbouring properties, both parties may wish to access the road for grazing purposes. Historical use does not give greater rights to use the public resource. Grazing privileges should be split at an appropriate midpoint along the length of the shared boundary. Meaning each neighbour would be allowed to use the full width of half the road along their shared boundary. A mutually agreeable solution should be sought rather than mathematical precision.

Council Principles

- A grazing licence gives formal legal approval for applicant's livestock to graze or for any other farming purpose.
- Grazing licences are dependent upon maintaining public access.
- Where more than one adjoining landowner requests an Unformed Road for grazing, a fair and equal split is preferred.
- Where an Unformed Road is used for grazing, the adjoining landowner is responsible for sowing and maintaining a grass surface appropriate for both the stock and the public's use of the road.
- A condition of grazing may be that fencing is required along the boundaries of the Unformed Road at the applicant's expense.
- Livestock that presents a hazard to the public (e.g. bulls) should not be permitted to occupy or graze Unformed Roads and must be fenced if grazing or occupying adjoining land.
- The public must exercise care towards any grazing animals on the Unformed Road.
- The public should take note and be aware of any stock grazing and exercise care, particularly while operating a vehicle or leading a horse, dog, or other animal.
- The public should be aware of Ovis Management requirements and take appropriate precautions as advised on <https://www.sheepmeasles.co.nz>.

1.5.2 Fences and Cattlestops

With approval from Council, a person may erect a fence with suitable gate, or cattle stop across an Unformed Road, in accordance with s 344 or 357 of the Act. A sign must be affixed to the gate indicating it is a public road.

Council has the power to require the owner or occupier of any land not sufficiently separated from a road to enclose the land with a fence for the safety or convenience of the public. This may be required in situations where an agreement cannot be reached balancing the use of an Unformed Road for grazing use by the public.

Council Principles

- Council is not financially responsible for the fencing of any Unformed Road boundaries under the Fencing Act 1978.
- All fences across Unformed Roads must be constructed with appropriate gates pursuant to the Gates and Cattlestops Order 1955.
- Council discourages the use of cattlestops due to potential danger to both horses and pedestrians. Cattlestops may be used in specific situations.

- Any gates across Unformed Roads should not be locked. Reference should be made to the requirements under section 344 of the Act.
- Temporary fencing for the purpose of stock control may be erected across an Unformed Road but must not unduly inhibit public access.
- Electric fencing along or across the Unformed Road may be necessary for marking boundaries and/or the containment of stock but should display appropriate warning signs unless in an area of low public use.
 - For example, an area of low public use could be if the Unformed Road is in a paddock.
- The public, after using a gate on an Unformed Road, must leave it in the state they found it in (either opened or closed).
- Council will not authorise the placing of beehives on Unformed Roads.

1.6 Use of Unformed Roads by Motor Vehicles

Most Unformed Roads will not have clearly defined areas for different types of users. Many Unformed Roads fall within the definition of a shared zone under the Land Transport (Road User) Rule 2004. In shared zones, vehicles and pedestrians must not unduly impede on each other's interest and use.

Council Principles

- Motor vehicles can be used on Unformed Roads where physically possible. The drivers have the same right of access as other road users unless expressly restricted by Council.
- Restriction of the use of motor vehicles on Unformed Roads may be required for the purposes of protecting the environment (Biosecurity/plant/pest matters), the road and adjoining land, or the safety of road users.
- Council expects users of motor vehicles on Unformed Roads to:
 - drive to the conditions.
 - Not drive a motor vehicle, or cause a motor vehicle to be driven, at a speed or manner which is or might be dangerous to the public, a person, or an animal (s 7(2) of the Land Transport Act 1998).
 - be aware of other road users on any part of the road and the obligation to give way to pedestrians.
 - assess the unformed surface and terrain for suitable conditions before accessing with a motor vehicle.
 - minimise damage caused by motor vehicles to the road surface (deliberate damage caused by actions such as wheel spins and burnouts are prohibited).
 - keep to formed tracks within the Unformed Road corridor where available.
 - Please note formed farm tracks may not be within the legal road boundaries and may not be available for public use.

Recreation, Dogs, Horses, and Hunting

Some Unformed Roads are used by recreational users for activities like walking, mountain biking, horse riding, hunting and to reach outdoor destinations such as rivers, lakes, and beaches.

Council Principles

- Council recommends the Code as the code of responsible conduct for recreational users of Unformed Roads.
- All users have an equal shared right of access to Unformed Roads.
- Persons walking, using vehicles or horses to access Unformed Roads must minimise damage to the surface of the road.
- Discharging firearms on Unformed Roads commonly used by other recreational users and boundary farmland is prohibited.

1.7 Walking Access

Herenega A Nuku/Outdoor Access Commission Aotearoa's Outdoor Access Map can be used for the public to identify when an Unformed Road is open to walking access.

Herenega A Nuku produced [the Code](#) to raise awareness of access rights and responsibilities for local authorities, its agents, and the public users. The Code is also applicable to other activities such as horse riding, mountain biking, fishing, and hunting.

1.8 Dogs

The Dog Control Act 1996 enables Council to make dog access rules for any public place by way of a bylaw. Notices will be erected to indicate when dogs are prohibited or are required to be on a leash.

Dogs must be under control and on a leash where the land adjoining the Unformed Road is a farm or stock is permitted to graze on the Unformed Road to mitigate any biosecurity risks.

Where the land adjoining the Unformed Road is forest, bush or otherwise undeveloped but special circumstances exist to require that dogs be prohibited or on a leash. Special circumstances arise where Council or the Department of Conservation (DoC) require areas where dogs need to be on a leash.

1.9 Horse Riding

Horse riders have the same rights to use Unformed Roads as they do on legal roads. Riders must take care to minimise damage to the environment to mitigate any biosecurity risks.

The road surface may include grass and uneven terrain which may not be suitable for horse riding in all weather conditions. Horse riders are to exercise care when using Unformed Roads to minimise the damage caused to the surface of the road.

1.10 Mountain Bikes, Motorbikes and Four-Wheel Drives

Mountain bikes, motorbikes and four-wheel drives are classified as vehicles in the Land Transport Act 1998. Riders and drivers of vehicles have the right of passage to any Unformed Roads.

They must not cause damage, modify the surface, or enter adjoining private property. Riders and drivers of mountain bikes, motorbikes and four-wheel drives may not ride on footpaths. See the [Land Transport \(Road User\) Rule 2004](#) for more information.

6.5 Hunting

Hunting on Unformed Roads commonly used by other recreational users is unsafe, due to the carrying and discharging of firearms. Persons using an Unformed Road for hunting can do all activities which are lawful on a formed road, including the right to carry a firearm if unloaded in a vehicle.

Unformed Roads are public places for the purposes of the Arms Act 1983. Therefore, the discharging of a firearm to endanger property, annoy or frighten any person is prohibited.

The firearms user may need to possess a current gamebird hunting licence to comply with the Wildlife Act 1953, and/or a DoC entry permit to comply with the Conservation Act 1987 on land administered by DoC. Other categories of land, such as forestry land, will also have specific entry permit requirements. Forestry land will have its own specific requirements for getting a permit to enter. Details of these requirements will be found through each individual forestry owner.

Risk of Fire

Where Unformed Roads pass through forests or bush, fire caused by a member of the public using the road is a significant risk.

Fire and Emergency New Zealand Act 2017 establishes responsibility for the control of fires and penalties for outbreaks.

Council Principles

- Council will rely on the advice of Fire and Emergency New Zealand to restrict access to Unformed Roads on a case-by-case basis.
- If the cause and person responsible are not identified, the cost associated lies with the owner of the land on which the fire started ignited.

Trees, Crops and Vegetation

Unformed Roads can feature illegally planted trees, grown, and managed by the occupiers or owners of adjoining forestry and horticultural land. Any trees on Unformed Roads are owned by, and under the management and control of, the Council.

No trees may be planted on a road without the express permission of the Council in accordance with section 357 of the Act. Trees can become a practical concern if they unduly obstruct public access through the Unformed Roads.

Any approved tree and vegetation works should have regard to their potential environmental impact.

Council Principles

- Encroachment issues relating to the removal of trees and crops will be considered by Council on a case-by-case basis.
- Adjoining landholders have no legal right to ownership or occupation of trees on the Unformed Roads.

- Council is unlikely to approve the planting of crops or trees over an Unformed Road. This may restrict the public's right to use the road.
- Unformed Roads must not be landscaped without written approval. Council requires anyone wanting to place an object or disturb vegetation on an Unformed Road to apply for permission (with the exception for mowing).
- Landowners must apply for a licence from Council to legally plant trees.
- Council will endeavour to formalise existing encroachments with written licences and conditions which will be appraised and granted on a case-by-case basis.
- Ownership of any lumber or produce from any illegal plantings may not rest with those who planted and maintained them, any licences for forestry or horticultural encroachments will need to specifically deal with these issues.
- Council is not opposed to adjacent landowners maintaining Unformed Roads through grazing and weed control in return for the benefits of use if reasonable access for vehicles and recreational activities is maintained.

8.1 Weed Control

Council Principles

- Landowners adjoining an Unformed Road should take responsibility for keeping the road free of weeds if being used for farming purposes.
- Weeds may be removed by road users for the purpose of continued access. However, working parties to clear large amounts of vegetation are not permitted without authorisation from Council.

Stopping of Unformed Roads

There are two methods for removing the status of an Unformed Road:

1. Road stopping under the Act; or
2. The Minister for Land Information may stop a road under s 116 of the Public Works Act 1981.

Council can stop roads, pursuant to Schedule 10 of the Act, by consultation of publicly notified plans. If the road is in a rural area, the consent of the Minister for Land Information must be obtained for the road to be stopped. If there are objections to the road stopping, the Environment Court will determine the outcome.

Assessments to stop the Unformed Road is based on several factors, including current and possible future use, to determine whether the public interest is outweighed by the need for stopping.

Once a road has been stopped, the Council is responsible for determining how the land will be used or disposed of. In practice, the purpose of the road stopping often determines how the land will be used.

Council Principles

- Council will not itself seek to have Unformed Road stopped.
- Council will consider applications for the stopping Unformed Roads on a case-by-case basis. All associated costs will be met by the applicant.

- With reference to section 345(3) of the Act, stopped roads bordering waterways are required to become esplanade reserves.

Formation of Unformed Roads

Council has no obligation to form any Unformed Road, and currently has no forward capital works programme to form or improve Unformed Roads.

Council will consider applications from adjacent property owners, developers, and interest groups to construct carriageways, cycle tracks, bridle paths and footpaths at the applicant's expense. This must be vital for development or where significant public access benefits are clearly demonstrated.

Before any party can begin the formation of an Unformed Road the following is required:

- 1) Consent from Council.
- 2) Any necessary regulatory consents which can be applied for from Council.
- 3) An investigation to determine whether any utility services run beneath the road and if they could be affected by the proposed works.
- 4) Assessment of biosecurity risks associated with the proposed development.
- 5) A Corridor Access Request is required for any excavation within the road corridor. Applicants are to apply using the [request process](#).
- 6) A Construction and Maintenance Agreement (**Agreement**) from Council must be acquired the applicant. This Agreement sets out the specification and on-going maintenance conditions required.
- 7) A first ranking memorandum of encumbrance registered against the title(s) of the applicant's lot(s) if the applicant is the adjoining landowner, will record their responsibility to maintain that part of the road.

Where a property owner is wanting their accessway to be classed as a formed road, the following is required:

1. The formed road must meet Council's Code of Practice for Subdivision and Land Development, this may require footpath, kerbing, appropriate road pavement and surfacing. The road may require a name; refer to Council Road Naming Policy.
2. The work would need to be designed and certified by a Chartered Professional Engineer.
3. All costs for this work would need to be met by the properties that gain the benefit of access from this road.
4. Once steps 1-3 are satisfied, the Assets and Services Committee for Council resolution to formally accept the responsibility of the formed road.

Private development is an exception to the requirements. Agreement for the developer to form a road within an Unformed Road corridor will need to be negotiated. Additionally, the resource consent application would be processed by Council's development engineers with input from Marlborough Roads. The newly formed road would be required to be built in accordance with the resource consent, approved engineering drawings and construction standards monitored by Council development engineers.

Upon completion, the newly formed road(s) is vested in Council to manage and maintain. In this case, there is no requirement for an agreement or encumbrance.

Council Principles

- Council will only form Unformed Roads where necessary for network development.
- Council will consider applications for other parties to construct carriageways, cycle tracks, bridle paths and footpaths etc. on a case-by-case basis.
- All costs for processing the application, construction and maintenance must be borne by the applicant.
- The standards and specifications for the construction of carriageways, cycle tracks and footpaths in Unformed Road must be in accordance with any relevant provisions of Council specifications. Any departures from standards or specifications must be approved by Council.
- Any matters not covered by these specifications must comply with any relevant NZ Standards which apply.

Enforcement

Encroaching on the road surface, airspace, or subsoil of an unformed or formed legal road without Council's consent or an encroachment lease or licence is a breach of section 357 of the Act, which can lead to fines and prosecution.

Council would firstly seek to either have the encroachment removed voluntarily or request the encroacher to apply for an encroachment licence, lease, or road stopping (if applicable) before such action would be considered.

In addition, there are court-imposed fines for breaches of Council bylaws made under the Act and Land Transport Act 1998 for unlawful activities on roads.

Monitoring and Review

This document will be reviewed on at least a three-year review cycle.

Record No: 254801