

Notice of Meeting:

I hereby give notice that an ordinary meeting of the Hearings Committee will be held on:

Date: Friday 2 July 2021
Time: 10.00 am
Venue: Edinburgh Room, Municipal Chambers, The Octagon, Dunedin

Sandy Graham
Chief Executive Officer

Hearings Committee

Application to Graze and Erect Two Gates Across a Legal Road, Waitati Valley Road

MEMBERSHIP

Chairperson Commissioner Ros Day-Cleavin

Senior Officer Simon Drew, General Manager Infrastructure and Development

Governance Support Officer Wendy Collard

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Governance Support Officer

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Note: Reports and recommendations contained in this agenda are not to be considered as Council policy until adopted.

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PART A REPORTS

APPLICATION TO GRAZE AND ERECT TWO GATES ACROSS A LEGAL ROAD, WAITATI VALLEY ROAD

Department: Transport and Legal

EXECUTIVE SUMMARY

- 1 The registered owners of 693 Waitati Valley Road and Ms Naylor have applied to the Dunedin City Council (**DCC**) for:
 - a) A grazing licence for the berms on part of Waitati Valley Road; and
 - b) Consent to erect two swing gates across Waitati Valley Road.
- 2 This report details the history, the application, the submitted objections and the response from the road controlling authority. Council staff recommend that the application be declined.

RECOMMENDATIONS

That the Commissioner:

- a) **Decides** pursuant to Council's Roading Bylaw 2020 and section 12 of the Local Government Act 2002 to decline the application for a grazing permit to graze the berms on part of Waitati Valley Road and for consent to erect two swing gates across Waitati Valley Road.

BACKGROUND

- 3 Waitati Valley Road (**WV Road**) runs from Leith Saddle down the Waitati Valley to State Highway 1 (**SH1**).
- 4 The northern end of WV Road, where it intersects with SH1, is located about 2 km from the township of Waitati.
- 5 A plan showing the location of the relevant portion of WV Road is attached as Attachment A.
- 6 Most of WV Road is maintained by DCC. There is a section of WV Road that is approximately 700 m long at the northern end of WV Road that is not maintained by DCC (**700 m Section**). The 700 m Section is from the ford and pedestrian footbridge over the Waitati Stream at one end to SH1 at the other end.
- 7 A plan showing the 700 m Section is attached as Attachment B.
- 8 The entire length and width of the 700 m Section is vested in DCC as legal road.

- 9 There is a formed gravel track on the 700 m Section, and it is treated as a 'privately maintained drive on legal road'. There are many such sections of legal road within the DCC area.
- 10 There are four properties that adjoin the 700 m Section. These properties are:
 - a) **693 WV Road**: This property is comprised in Lot 3 - 4 Deposited Plan 301458 and Section 1 Survey Office Plan 315882. It is held in Record of Title 6229 and the registered owners are Mark Spencer and Alistair Broad. DCC understands that the two registered owners hold the land as trustees of the Marrafin Trust.
 - b) **669 WV Road**: This property is comprised in Lot 2 Deposited Plan 301458. It is held in Record of Title 6228 and the registered owners are John Ransley and Carolijn Guytonbeck.
 - c) **671 WV Road**: This property is comprised in Lot 1 Deposited Plan 10896 and Section 2 Survey Office Plan 315882. It is held in Record of Title OT4C/849 and the registered owners are Peter and Wendy Clinch.
 - d) **673 WV Road**: This property is comprised in Lot 1 Deposited Plan 325465. It is held in Record of Title 102894 and the registered owner is Scott Kearney.
- 11 For the purposes of this report:
 - a) The property at 693 WV Road is described as Mr Spencer's Land.
 - b) The property at 669 WV Road is described as Mr Ransley's and Ms Guytonbeck's Land.
 - c) The property at 671 WV Road is described as Mr and Mrs Clinch's Land.
 - d) The property at 673 WV Road is described as Mr Kearney's Land.
 - e) The properties at 693, 669, 671 and 673 are described at the Four Properties.
- 12 A plan showing the location of the Four Properties is attached as Attachment C.
- 13 The Four Properties are zoned Coastal Rural in the DCC Second Generation District Plan and rated as rural lifestyle properties.

Mr Spencer's Land

- 14 Mr Spencer's Land is located on both sides of WV Road. The total area of Mr Spencer's Land is approximately 16.9 hectares.
- 15 Mr Spencer's Land is a lifestyle property that is a mixed lifestyle farm operation including consented sports and recreation and visitor accommodation activities (equestrian), plus a wood lot. The Applicant has cattle and moves them across WV Road to and from different parts of Mr Spencer's Land.
- 16 Subdivision RMA 2001-0675 approved the subdivision that created Lots 3 - 4 Deposited Plan 301458 (Mr Spencer's Land). This consent included the following:

“Advice Notes

- 1 *The Technical Engineer, Transportation Planning, advises the Applicant of the following:*
- (i) ...*
 - (ii) The Council maintains Waitati Valley Road to the ford only; maintenance of the remainder of the road lies with the surrounding landowners.*
 - (iii) It is recommended that a maintenance agreement be entered into between the landowners regarding the portion of Waitati Valley Road not maintained by Council.*
 - (iv) No vehicular access is allowed onto State Highway 1 from the properties directly fronting the highway.”*

The Application

- 17 The registered owners of 693 WV Road and Ms Annie Naylor have applied to the DCC for:
- a) A grazing licence for the berms on part of Waitati Valley Road; and
 - b) Consent to erect two swing gates across Waitati Valley Road.
- 18 The exact location of the two gates will need to be clarified with the Applicant as:
- a) The Applicant, through their lawyer, has advised that the gates would be located where the road bisects the Spencer Land; but
 - b) The Applicant has, without DCC consent, erected two gates across WV Road and the most southern gate is approximately 25 m to the south of the point where WV Road bisects Mr Spencer’s Land.
- 19 For the purposes of this report:
- a) The registered owners of 693 WV Road and Ms Annie Naylor are described as the Applicant;
 - b) The two gates currently erected on WV Road (as shown on Attachment C) are described as the Two Gates;
 - c) It is assumed that the application relates to the current location of the Two Gates, but the information in this report also applies if the Applicant’s intention is to move the most southern gate northwards by approximately 25 m; and
 - d) The part of WV Road between the two gates is described as the Proposed Grazing Section.
- 20 The Applicant has sought consent for the Two Gates on numerous previous occasions. DCC has not previously consented to the Two Gates.
- 21 The most recent application is set out in a letter dated 14 April 2021 from Gordon Paine (as the Applicant’s lawyer) to DCC. A Mr Paine’s letter of 14 April 2021 is attached as Attachment D, including the photos attached to that letter.

22 The Applicant wishes to gate the Proposed Grazing Section from time to time to keep the grass down and for the purpose of moving stock. The Applicant states that this will:

- a) Enable the use of cattle to graze vegetation and therefore reduce fire risk; and
- b) Improve safety by preventing the escape of cattle onto other roads, such as SH1.

23 The Applicant, through their lawyer, has advised that:

"...when the gates are open they actually form part of the fence line as it is only having the these closed that causes the issue that we are concerned with. The amount of time the gates would need to be closed by my clients to enable them to move stock would be seasonal and it is difficult to be precise as it is weather dependent. However as a usage of the gates as a mechanism for controlling stock can be limited to after the spring growth. There needs to be frequent maintenance of the road which is usually one to two hours at least once a week. There is also movement up and down the road from one paddock to another again dependent on growth. During the winter months it is possible to feed stock out on a feed pad for approximately two hours a day and moving them then to their holding and wintering paddocks."

24 The Applicant, through their lawyer, states:

- a) Mr Kearney consents to the Two Gates.
- b) "Mr Ransley at the southern end originally advised the council he was opposed to a gate on the southern end of the unformed road. However, we believe that may now not be the case and that he is happy with the gate. Accompanying this letter are photographs taken recently (6 April) with Mr Ransley moving his stock. It can be seen from the photos he is in fact using the gate and hotwire tapes across the road as part of his stock control arrangements and the gate is closed, and was closed by Mr Ransley."
- c) "A grazing licence would enable the berms to be controlled because they are particularly susceptible to fire in summer months ..."
- d) "It is important to note that if the gates are opened when stock is using the road pursuant to the grazing licence, by a third party or unknown party, there is a distinct possibility the stock would end up on SH1 and on the motorway which could be the cause of a horrific if not fatal crash."
- e) ... "it does seem that there is now only one objector to the proposal to have gates ... based upon the fact that Mr Clinch Senior wishes to walk unimpeded on the road. He can still do that. Whether or not he would wish to walk on the road when stock are grazing is a matter for him but provided he left the gates as he found them there is not issue whatsoever" [sic]
- f) "This application is made without prejudice to my client's rights to apply to stop the road completely ..."

The Objections

25 Notice of this hearing was sent to the owners of the Four Properties and to Mr Clinch's father, as he lives with Mr and Mrs Clinch at 671 WV Road. The owners of the Four Properties are considered to be the parties most directly affected by the Applicant's application.

- 26 Although not sent notice of the hearing, the Halo Trust has made a written submission. A copy of the written submission is attached as Attachment E. It will be for the Commissioner to decide whether the Halo Trust's submission should be considered as part of the hearing. It is recommended that this be considered at the commencement of the hearing as a preliminary procedural matter.
- 27 In response to Council's notice of this hearing, two objections have been received from neighbours. These objections are attached as Attachment F. The objections are summarised below:

Owner/property	Nature of objection
John Ransley and Carolijn Guytonbeck, owners of 669 Waitati Valley Road	<ul style="list-style-type: none"> • States that the Applicant has a consistent history of trying to block WV Road since first erecting gates in 2012. • Use of public land by private party. • Erection of gates blocks both public access and the access to 671 and 673 WV Road, and the alternate access for 669 in times of flood. • Wants a review of the encroachments, as the Applicant has not erected fences on legal boundaries. • Concerned about cattle being in Semple Burn. • Considers the notice on the gates misleading. • States that the Applicant's fencing on either side of WV Road denies public access to the Semple Burn which runs alongside the road. • States that WV Road would be required for potential subdivision at the northern end of WV Rd. • WV Road is the alternate access to 669 WV Road in times of flood and, while debris blocks the DCC-owned ford, for periods up to 3 weeks in any year. • States that the Applicant's gates encroach into Mr Ransley's and Ms Guytonbeck's Land and the legal road. • WV Road forms a link that could be used for cycle/pedestrian access. • The use of WV Road for grazing is inconsistent with the works being done on esplanade reserves and to revegetate a portion of the Semple Burn that runs through Mr Ransley's and Guytonbeck's Land. • States that there is opportunity for DCC to work with the Halo Project to enhance Semple Burn (where Semple Burn is on legal road). • Requests that application be rejected, that DCC orders removal of gates and reviews the fencing of legal road to address encroachment issues.
Peter Clinch, owner of 671 Waitati Valley Road	<ul style="list-style-type: none"> • States that strongly opposes gates. • States that the Clinch's use WV Road frequently for driving and walking. • States that cattle are being fed out on WV Road. • Dangerous for his elderly father and children to walk through the cattle. • The manure that is left on the road by the cattle. As their business involves entering people's homes, having to wear gumboots to open the gates is an inconvenience. • They do not wish to lose access along WV Road as, while it is not their only access, it is the safest access during flooding as their leg-in has a bridge prone to flood washout. This would be their only access if their bridge becomes uneconomical to fix. • Cattle effluent run-off into the adjacent creek.

DISCUSSION

History

- 28 This matter has a long history. Documents from DCC's file are attached as Attachment G.
- 29 It is evident from the documents in Attachment G that:
- a) There have been repeated requests for the Two Gates and numerous complaints about the Two Gates; and
 - b) The Applicant has acted without DCC's consent and/or in breach of Council's Roding Bylaw.
- 30 The most recent breach by the Applicant, of DCC's directions was in May 2021. On that occasion, DCC wrote to the Applicant's lawyer on 13 April 2021 advising that:
- "Pending the outcome of the Hearing, the gates are to remain open at all times and stock are not authorised to be left on Waitati Valley Road for the purpose of grazing or any other purpose".*
- 31 On 20 May 2021, Mr Peter Clinch sent Council photos of the closed Two Gates and the Proposed Grazing Section of WV Road being used by the Applicant for grazing purposes. A copy these photos are attached as Attachment H.

Regulatory Considerations

Right to pass and repass

- 32 It is generally accepted that all members of the public have the right to pass and repass over legal road, subject only to limited exceptions. This right is protected through the common law and the New Zealand Bill of Rights Act 1990.
- 33 The Applicant has advised that they will not lock the Two Gates. Photos showing the notices that have been put on the Two Gates are attached as Attachment I.

DCC's Roding Bylaw 2020 and Statutory powers

- 34 The DCC's Roding Bylaw 2020 is attached as Attachment J.
- 35 The provisions of the Roding Bylaw 2020 that are particularly relevant here are:

"Things in roads

- 2.1 *No person shall without the consent of the Council or in accordance with the provisions of this Bylaw place or leave anything on the road other than a vehicle lawfully parked.*
- 2.2 *Without limiting the generality of 2.1 no person shall:*
- g) *Erect or install or cause to be erected or installed any gates or doors capable of being swung over or across any roads;*

The Council may allow things in roads

3.1 *The Council may grant to any person on such terms as it thinks fit permission for a specified thing or things to occupy a place or places in a road.*

3.2 *The Council may in granting permission under clause 3.1 impose conditions on the grant of permission in relation to the health, safety and convenience of users of the road and for the protection of the road and for any other relevant matter. The Council may charge such fee as it may fix in respect of the grant of permission for the thing to occupy roads.*

3.3 *If a thing is left in the road in breach of conditions imposed pursuant to clause 3, or the fee payable under the clause has not been paid, the Council may require the thing to be removed.*

5 *Activities that damage roads*

5.1 *No person shall undertake any activity that causes or may cause damage to any road.*

9 *Stock droving*

9.2 *In any part of the city zoned for rural purposes, no animal, other than in a yoke or harness, may be on any road except for such periods and under such adequate control as is necessary for the protection of the road and the health, safety and convenience of users of the road."*

36 Under section 344 of the Local Government Act 1974, Council can allow gates in certain circumstances. However, in these circumstances, the Bylaw is considered more applicable as it relates to the circumstances that apply here.

37 Under section 12 of the Local Government Act 2002, DCC is given wide powers.

38 The combined effect of the Roding Bylaw 2020 and section 12 of the Local Government Act 2020 is that DCC has the discretion to:

- a) Grant or decline all or part of the Applicant's application; and
- b) If granted, impose such conditions as DCC considers reasonable.

Use of Road Space

39 The private drive along the legal road is not an uncommon situation. Generally, private drives are consistent with the purpose of a road, providing access along the road and to private properties. Private drives do not require any ongoing permission to remain in place once lawfully established.

40 Private use of road space for any activity apart from access can be problematic. Some private use can be granted under a licence to occupy, for example the use of legal road for private garages. In weighing up whether to grant a licence, council staff consider factors such as whether a licence is appropriate in the situation, whether there are grounds for reasonable objections, the presence of utilities and demand for access. The policy relating to road encroachments is attached as Attachment K.

Road Stopping

- 41 The Applicant has mentioned that they could apply for a road stopping. That process would involve an application to DCC. Legal road that is not currently required and unlikely to be required in the future may be 'stopped' and then purchased through this process. The Local Government Act 1974, sections 319(1)(h), 342 and Schedule 10, describes the process that the Council must use. It is a formal process to which members of the public can object. If there are any unresolved objections, then the matter is referred to the Environment Court.
- 42 It is unlikely that DCC staff would support a road stopping in this location and, even if DCC decided to commence a road stopping process, there is no guarantee that the application would be successful.
- 43 No application has been made to DCC for a road stopping of any part of WV Road as of the date of this report.

Other Users of the Road

- 44 Utility operators also have the right to use the road corridor under the Utilities Access Act 2010. Here, there are utilities for power and telecommunications.
- 45 Use of the road for stock movement in a rural area is regulated by clause 9.2 of the Roding Bylaw 2020 (as set out above).
- 46 Members of the public have the right to use legal road. Pedestrian and cycle access is allowed onto SH 1 at the point where WV Road meets with SH1. However, it is not currently known how many pedestrians and cyclists use this portion of road and there are no facilities such as cycle lanes or paths.

Cattle Stops

- 47 Staff have considered whether cattle stops may be appropriate here. Staff consider that, if cattle were allowed within the road, there would still be safety concerns for pedestrians and cyclists having to share the road with cattle, unreasonable interference with the public right to pass and repass along legal road and the environmental issues (particularly regarding Semple Burn).

DCC Transport's response to the Application*Status of 700 m Section*

- 48 The 700 m Section, which is the subject of the Applicant's application, is undoubtedly legal road.
- 49 It does not matter that 700 m Section is described by the Applicant as a "paper" road or "unformed road" or the like, the fact remains that it is legal road. A paper road holds the same status as formed roads, which means that the public has the right to drive their vehicles, walk on foot, cycle along the road.

Existing encroachments by the Applicant into the width of the legal road

- 50 It should be noted that:
- a) The 700 m Section is approximately 20 m wide; and

- b) The Applicant is already encroaching on approximately 6 m of the 20 m width as the Applicant has fenced approximately 6 m of the legal road so that it (physically but not legally) forms part of the Applicant's paddocks.

51 DCC wants to make it clear that any part of the legal road that has been physically fenced off so that it appears as being part of the Spencer Land remains legal road and DCC reserves its right to require the fences to be moved by the Applicant so that they are on the legal boundary.

Location of WV Road in relation to Semple Burn

52 Semple Burn is a stream located very close to or on the western boundary of the 700 m Section. It is a tributary of the Waitati River.

53 DCC does not want cattle to access Semple Burn from the legal road and wants to ensure that there is no effluent left on the legal road that is discharged into the Semple Burn, whether that is a direct discharge or an indirect discharge through run off. As the owner of the legal road, DCC has an obligation to avoid environmental harm.

Considerations from a roading perspective

54 There are a range of considerations here, including:

- a) An application for use of legal road must be considered by DCC in a fair and reasonable manner, balancing the rights of members of the public to pass and repass over legal road with the terms of an application.
- b) There is no requirement for DCC to allow private occupation and use of legal road.
- c) Maintenance of a private drive on legal road does not imply any extra rights to use or 'ownership of the road'.
- d) DCC's Transport Team wants to retain WV Road to preserve potential future uses, noting that DCC in 2011 built a replacement footbridge over the Waitati River to replace a footbridge in the immediate vicinity of WV Road.

Two Gates

55 In general, DCC's Transport Team does not usually object to the erection of gates if there are no reasonable objections to the erection of the gates.

56 The Applicant has tried to persuade DCC's Transport Team that the objections by Mr and Mrs Clinch and Mr Ransley and Ms Guytonbeck are unreasonable. DCC's Transport Team does not consider the objections unreasonable. The gates and the cattle are a significant obstruction of the legal road. This is for many reasons, including the following:

- a) People who wish to drive along the legal road are required to get out of their car at least four times within a reasonably short distance (once to open the first gate, once to close the first gate, once to open the second gate and once to close the second gate) – potentially stepping in effluent on at least two of the four occasions.
- b) It is potentially intimidating for people who want to walk along the road to have to enter an area where there are cattle that are grazing or being fed out – this is probably particularly true for children and the elderly.

- c) Cycling along the legal road would have similar issues, including having to get on and off their bikes at least four times within a reasonably short distance, potentially being frightened of the cattle, potentially standing in effluent etc.
- d) WV Road is the alternate access to Mr Ransley's and Mrs Guytonbeck's Land at 669 WV Road in times of flood and blockage of the ford. The photos attached as Attachment L show the ford in flood in 2018.
- e) WV Road is the alternate access to Mr and Mrs Clinch's Land and would be their only access if their bridge became uneconomical to fix.

57 The Two Gates have signage which is arguably misleading and potentially intimidating.

58 The Applicant has advised that, in addition to wanting the gates for grazing purposes, the Applicant also wants the gates to assist with moving stock. DCC is concerned that the gates may remain closed for longer than the minimum period required to drive stock, causing an unreasonable obstruction of the legal road. DCC does not receive many requests for gates to allow for the driving of stock. Allowing gates for the purpose of driving stock could create an unfortunate precedent.

Grazing Licence

59 DCC has issued very few grazing licences over legal road. Staff can only think of one such grazing licence.

60 DCC has concerns regarding the issue of a grazing licence of WV Road, including the following:

- a) A grazing licence over the carriage way would be an unreasonable obstruction of the legal road.
- b) A grazing licence of the western berm has the potential to create environmental issues through its proximity to Semple Burn. DCC wants to avoid any unlawful discharges to Semple Burn and does not want to assume legal risk as the legal owner of the road.
- c) A grazing licence of the eastern berm of the legal road is undesirable because:
 - i) The Applicant has, physically through fencing but not legally, already incorporated part of the eastern side of the legal road into the Applicant's adjoining paddocks.
 - ii) The remainder of the eastern berm is not particularly wide and would require additional fencing. Given the history of this matter to date and the Applicant's previous non-compliance, DCC is concerned that the fencing would be of an inadequate standard and/or erected at locations that have not been agreed and/or not used.

61 In addition to the above:

- a) DCC would like to take a consistent approach for all landowners along WV Road so that none of the landowners are authorised to use the legal road for grazing purposes. This is to ensure that the road is kept free for members of the public to pass and repass without unreasonable obstruction.

- b) DCC is not convinced that grazing the legal road is the only option for maintaining the legal road.
- c) As pointed out by the Applicant's lawyer, if the gates are opened when stock is using the road pursuant to a grazing licence, by a third party or unknown, there is a possibility the stock would end up on SH1 and could be the cause of a crash. This is a reason for not allowing cattle to graze the legal road.

Recommendation

62 For the reasons set out below, staff recommend that the Applicant's application for a grazing licence and the erection of two gates across WV Road be declined:

- a) The main purpose of legal road is to allow all members of the public to pass and repass over the road.
- b) The Applicant's application would unreasonably interfere with the rights of members of the public to pass and repass over legal road.
- c) Although the Applicant has advised that the gates are not locked and will not be locked, the cattle and gates are an unreasonable obstruction to the public's right to pass and repass over legal road.
- d) There is the potential for unlawful discharge from the legal road into Semple Burn if the legal road is used for grazing purposes. There has been no discussion on how that would be managed. Having cattle on the legal road exposes DCC to legal risk as owner of the legal road.
- e) There are objections from two neighbours that set out reasonable grounds for objection.
- f) Access is required for the two objectors, especially in flood conditions.
- g) It is important to preserve the options for use of WV Road in the future.
- h) There are means of maintaining the berms, other than by grazing, such as mowing or weed-eating.
- i) There has been repeated non-compliance by the Applicant. This gives DCC little confidence that the Applicant would adhere to any conditions of consent.
- j) There is a risk that the gates on the legal road may be left open, which has the potential to be a significant health and safety risk.

63 If the Applicant's application is approved by the Commissioner, staff recommend that the following conditions be imposed:

- a) The grazing licence is restricted to the berm on the eastern side of the legal road (being the land between the eastern boundary of the legal road and the eastern edge of the carriageway within the legal road). There is to be no grazing on the carriage way, nor on the western side of the legal road.
- b) The grazing licence will be restricted to a total of 10 days per year. These days can only be taken on any of the following dates:

- i) The first and/or second day(s) of a month; or
- ii) The 14th and/or 15th day(s) of a month.
- c) Any one grazing period on the legal road shall not exceed a period of 48 hours.
- d) The Applicant must erect fencing to ensure that its stock may only graze the eastern side of the legal road and shall not graze the carriage way nor the western berm. The fencing shall be to such a standard as to ensure that the cattle are limited to being able to graze the eastern berm.
- e) If the gates are required for grazing the eastern berm, then the gates are to remain open on all days (except the 10 days referred to in paragraph 63(b) above. If the gates are not required for the purpose of grazing the eastern berm then the gates shall be removed by the Applicant within 14 days of the Commissioner's decision.
- f) A licence fee will be payable in accordance with DCC's encroachment policy.
- g) The condition of the road is to be maintained by the Applicant, and the Applicant must pay a bond of \$5,000 (plus GST, if any) to DCC for any work required as a result of the Applicant's failure to maintain legal road and/or for repairs required as a result of the cattle being on the legal road.
- h) The grazing licence may be terminated immediately by DCC upon written notice if DCC considers, in its sole discretion, that there are environmental issues that need to be remedied immediately.
- i) The Applicant must remove the gates within 10 working days of the grazing licence terminating.
- j) The Applicant shall meet all legal costs, including DCC's reasonable legal costs, of preparing the grazing licence.
- k) The Applicant must not graze the legal road until a grazing licence, on terms approved by DCC's solicitors, has been signed by the Applicant and DCC.

OPTIONS

Option One – Status Quo

64 Decline the Applicant's application for:

- a) A grazing licence for the berms on part of Waitati Valley Road; and
- b) Consent to erect two swing gates across Waitati Valley Road.

Advantages

- Allows the public to pass and repass over legal road without unreasonable interference.
- Reduces the risk of unlawful discharge from the legal road into Semple Burn.

- Preserves access, without unreasonable interference, for neighbours if or when other means of access are lost.
- Reduces the risk of the gates across legal road being left open and cattle escaping, potentially onto SH1.

Disadvantages

- It would restrict farming activities to private land.

Option Two

65 Allow:

- A grazing licence for the berms on part of Waitati Valley Road; and/or
- Consent to erect two swing gates across Waitati Valley Road.

66 This option may include such conditions as considered appropriate by the Commissioner.

Advantages

- Would mean that farming activities would not have to be restricted to private land.
- The grazing licence would specify the Applicant's obligations.
- The conditions would prevent the legal road from being used except in accordance with the conditions (if any).

Disadvantages

- Would limit the public's ability to pass and repass over legal road.
- Risk of unlawful discharge into Semple Burn.
- Risk of the gates being left open by users of the legal road, and cattle escaping.
- Given the history of this matter, staff have concerns around whether conditions would be complied with.

NEXT STEPS

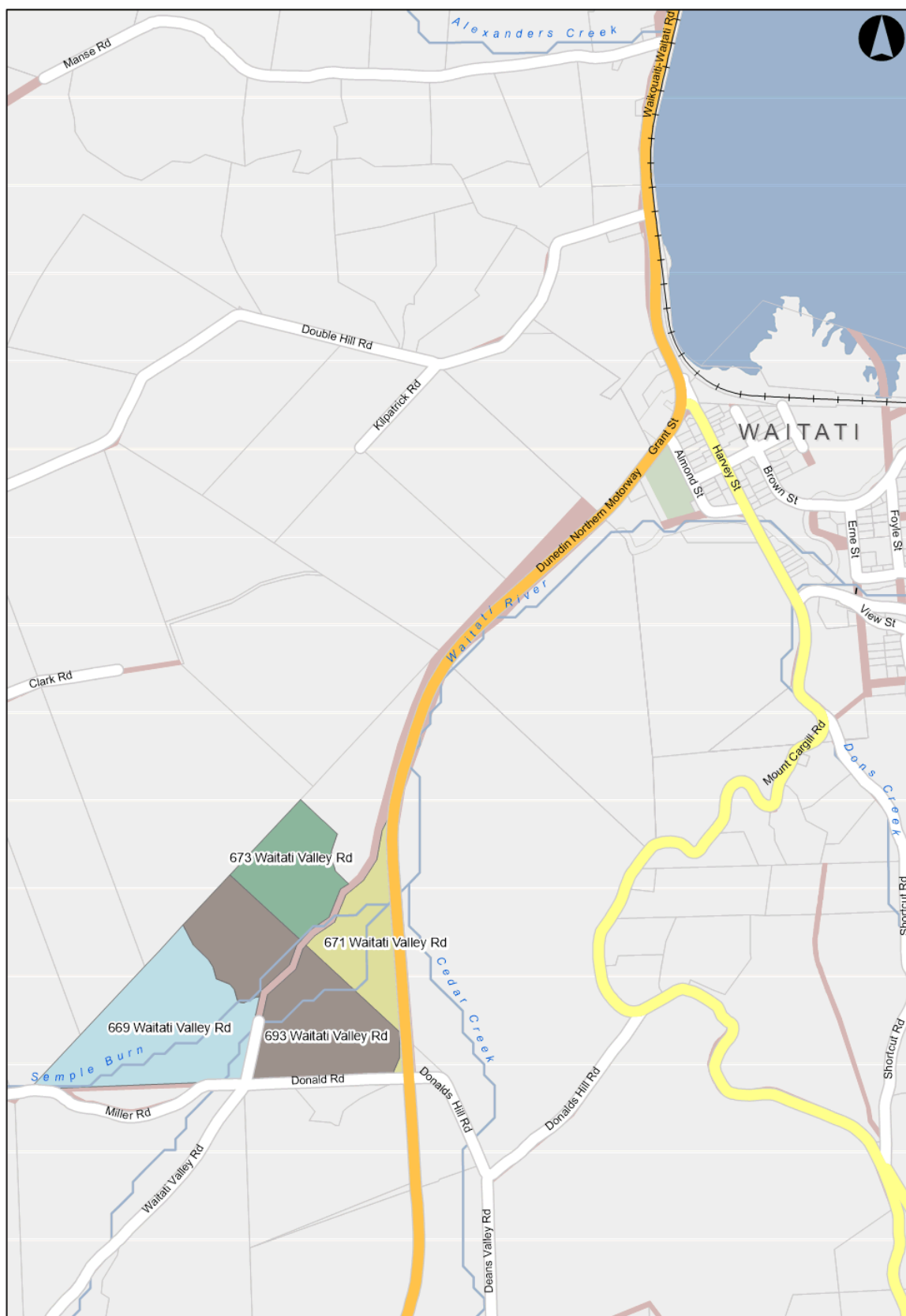
- 67 This summary of the application, objections, and road controlling authority response is to inform the independent Commissioner. The Commissioner will then make her decision on whether to allow a grazing licence and/or the erection of two swing gates.
- 68 If the Commissioner declines the Applicant's application, DCC will require the Applicant to remove the Two Gates within 21 days of the Commissioner's decision.
- 69 If the Commissioner approves the Applicant's application, DCC will instruct its solicitors to prepare a grazing licence based on the conditions imposed by the Commissioner (if any).

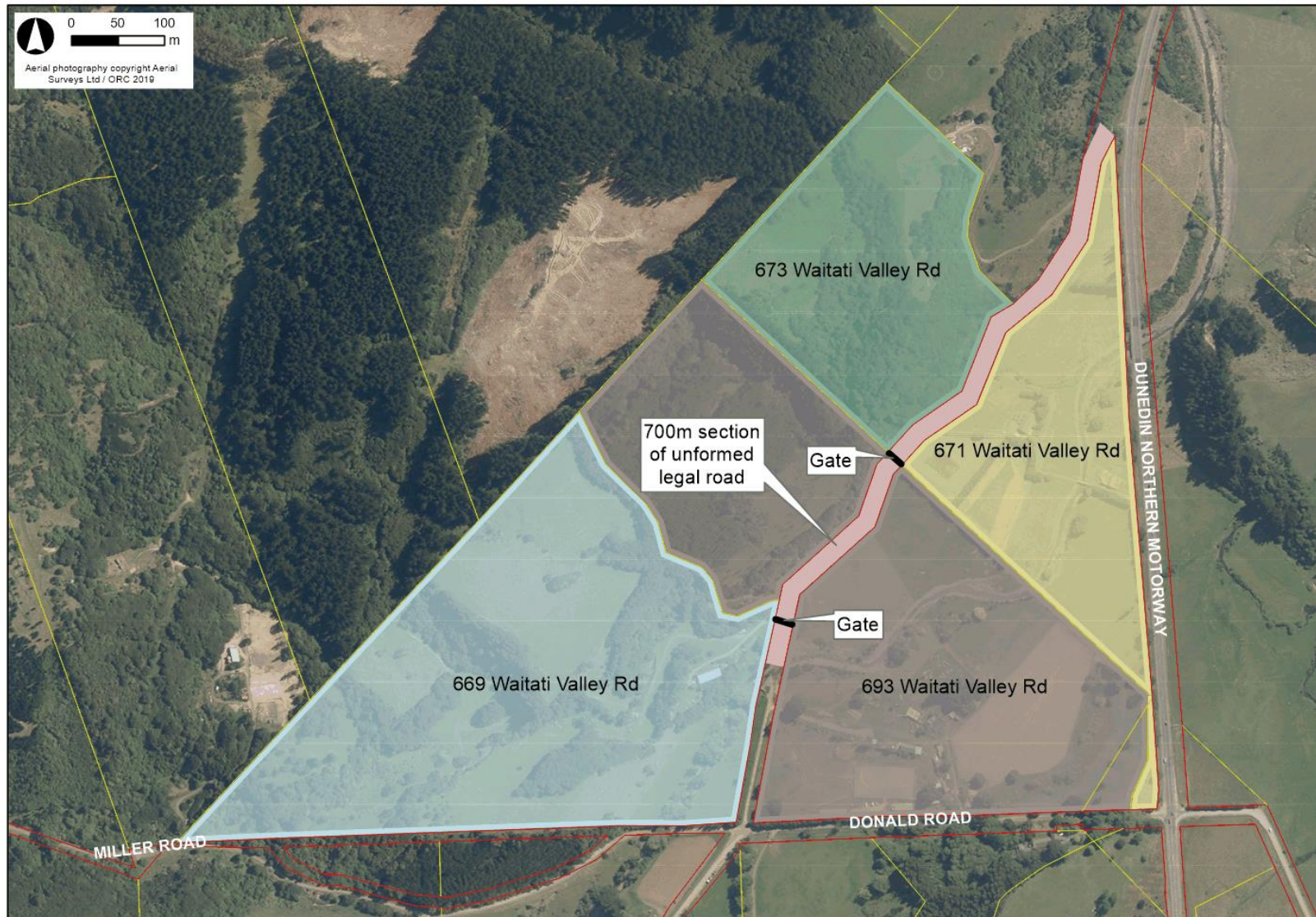
Signatories

Author:	Michael Tannock - Transport Network Team Leader Karilyn Canton - Chief In-House Legal Counsel
Authoriser:	Jeanine Benson - Group Manager Transport Sandy Graham - Chief Executive Officer

Attachments

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14 April 2021

BY EMAIL

Karilyn.Canton@dcc.govt.nz

Dunedin City Council
PO Box 5045
DUNEDIN 9054

Attention: Karilyn Canton

RE: MARRAFIN TRUST (SPENCER/NAYLOR)

Thank you for meeting with the writer and his clients with respect to this matter on 1 April 2021. I have to hand your email of 13 April also.

As discussed at the meeting, my clients wish to formally make application for a grazing permit to graze the berms on the side of the road known as the *"the unformed paper road"*. For that purpose, they would erect two gates, one at the north side, and one at the south end where the road bisects the property. At the north end Mr Kearney, a neighbour, has approved the placement of a gate across the road as it protects his situation and prevents stock from entering his property, and it prevents his stock from wandering. I attach herewith a copy of his correspondence confirming that. The only other person to use this part of the road is a Mr Clinch whose elderly father, suffering from dementia, walks on the unformed road on occasions. It is believed however that he has been removing the gate that is situate there and which forms part of the fence line when opened and it is believed he has undertaken some sort of wanton vandalism which has involved and still involves the police.

As stated above, when the gates are open they actually form part of the fence line as it is only having the gates closed that causes the issue that we are concerned with. The amount of time the gates would need to be closed by my clients to enable them to move stock would be seasonal and it is difficult to be precise as it is weather dependent. However as a usage of the gates as a mechanism for controlling stock can be limited to after the spring growth. There needs to be frequent maintenance of the road which is usually one to two hours at least once a week. There is also movement up and down the road from one paddock to another again dependent on growth. During the winter months it is possible to feed stock out on a feed pad for approximately two hours a day and moving them then to their holding and wintering paddocks.

Mr Ransley at the southern end originally advised the council he was opposed to a gate on the southern end of the unformed road. However, we believe that

may now not be the case and that he is happy with a gate. Accompanying this letter are photographs taken recently (6 April) with Mr Ransley moving his stock. It can be seen from the photos he is in fact using the gate and hotwire tapes across the road as part of his stock control arrangements and the gate is closed, and was closed by Mr Ransley.

A grazing licence would enable the berms to be controlled because they are particularly susceptible to fire in summer months should it breakout in that area. Such a blaze would put at risk not only my client's property but also that of Mr Ransley and Mr Clinch and therefore the concept of keeping the vegetation under control is a public safety matter. It is also important to know that if the gates are opened when stock is using the road pursuant to the grazing licence, by a third or unknown party, there is a distinct possibility the stock would end up on SH1 and on the motorway which could be the cause of a horrific if not fatal crash. From an occupational health and safety perspective, it is appropriate that the gate be used as a gate as opposed to part of the fence line when there is grazing on the unformed road, for the better protection (safety and health wise) of all parties who wish to use the unformed road.

However, it does seem that there is now only one objector to the proposal to have gates which would be used as outlined above and based upon the fact that Mr Clinch Senior wishes to walk unimpeded on the road. He can still do that. Whether or not he would wish to walk on the road when stock are grazing is a matter for him but provided he left the gates as he found them there is not issue whatsoever.

Accordingly, we look forward to an independent commissioner hearing this matter and we suggest that this correspondence be on the file for the commissioner so that by way of background the commissioner can consider the position.

This application is made however without prejudice to my client's rights to apply to stop the road completely which although an expensive exercise would resolve the problem for all parties. My clients do not wish to run to this extreme or expense nor put the council to such an expense however it must reserve its position.

Accordingly, we look forward to hearing from you.

Yours faithfully



GORDON PAINE

Wendy Collard

From: Jennifer Lawn <jennifer@haloproject.org.nz>
Sent: Friday, 11 June 2021 05:01 p.m.
To: Wendy Collard
Subject: Fwd: ref Waitati Valley Road. Hearings Committee. July 2

In my haste to get this in today from my phone, I sent this from my personal email. Please accept this copy from my work email address.

Thanks
Jennifer

From: Jennifer Lawn [REDACTED]
Sent: Friday, June 11, 2021 4:56 PM
To: Jennifer Lawn
Subject: Fwd: ref Waitati Valley Road. Hearings Committee. July 2

Begin forwarded message:

From: Jennifer Lawn [REDACTED]
Date: 11 June 2021 at 4:55:12 PM NZST
To: Wendy.Collard@dcc.govt.nz
Subject: ref Waitati Valley Road. Hearings Committee. July 2

Kia Ora Wendy,

The Halo Project - Source to Sea has received funding to help landowners fence and plant waterways, wetlands and forest habitat in coastal Otago. We're funded by Te Uru Rakau, Provincial Development Unit, Department of Conservation and ORC ECOfund.

We're actively working with multiple landowners along the Semple Burn and Waitati Rivers to restore riparian habitat. This involves weed control, fencing to exclude stock and planting native plants to restore healthy habitats.

We have a large project area, spanning 124,000 hectares from Dunedin to Waihemo Shag River. Our site selection process includes an assessment of public visibility and ability to connect with the community as well as the ability to restore full catchments and connect habitat. We request the Dunedin City Council consider our project when deliberating any changes to the public access in this area and it's awa.

Ngā mihi nui,

Jennifer Lawn
Project Manager
Halo Project - Source to Sea

Hearings Committee submission - Gates on Waitati Valley Road.

Wednesday, 9 June 2021

We have lived in Waitati Valley since 1988 - for 12 years prior to subdivision in 2000 we rented the farmhouse at 693 Waitati Valley Road and have been residents in our newly built home at 669 since 2008. We were directly involved in the subdivision of Glenkimmel Farm into the series of properties that now exist and use the section of public road in question.

Our submission has been written in the absence of any information from the Council on the application to grant retrospective approval to erect gates other than the notice of hearing dates and an aerial photo showing the approximate location of the 'proposed' gates.

Background.

The applicant has a consistent history of trying to block Waitati Valley road since first erecting gates in 2012 and through his lawyer has constructed a trumpian narrative of mis-information and demonstrably false assertions.



Above - the applicants cattle on the banks of the Semple Burn adjacent to Waitati Valley Road in 2018 - the legal boundary of the public road is in the bed of the stream. The fencing is live electric and was placed without reference to the boundary around 2014.

The application to erect gates blocks both public access and the access to 671 and 673 Waitati Valley Road, and the alternate access in times of flood to 669.

The property at 671 has been occupied by 5 owners subsequent to the subdivision in 2001. All have had access & boundary issues with the applicant.

In 2012 the owners of 671 engaged a lawyer who laid a formal objection with the DCC regarding the gates. (See attached file note) We also approached the council and corresponded with the applicant stating our objections. The DCC ordered the removal of the gates, and for there to be fencing carried out on the eastern side of the road in 2013. Despite this in 2014 the applicant again blocked the road at both points, this time with live electric tapes and continually ran stock on the road. The DCC again ordered the removal of the tapes and issued a 28 day fencing notice.

In 2014 the DCC was notified of an issue with an unburied and rotting cow carcass in the applicant's paddock adjacent to our property.

In 2015 MPI responded to a complaint from a member of the public relating to the emaciated condition of the herd of cattle belonging to the applicant in the forestry paddock adjacent to the road.

In 2017 the applicant was again blocking and using the road as a winter feeding platform from March through to July, unrolling round bales on the road. A further complaint was laid and the DCC ordered this practice to cease.

In July 2017 a large flood occurred causing significant damage and scouring to the road. The owners of 671, 673 and 699 combined to have the road level raised using river rock and gravel extracted by the contractors employed by the ORC to clear the ford. The 3 owners have continued with an agreement to maintain the road and have carried out drainage work, weed spraying and cutting in the verges and filling low points on the road from 671 north.

In September 2018 the ORC responded to a complaint regarding the applicant's cattle being confined to the banks of the Semple Burn adjacent to the road and this section being used for feeding out.

The section where the cows are confined is not the applicants property - it is the public road. The road boundary extends down to and in some case across the entire width of the Semple Burn. See the detail of Diagram A.

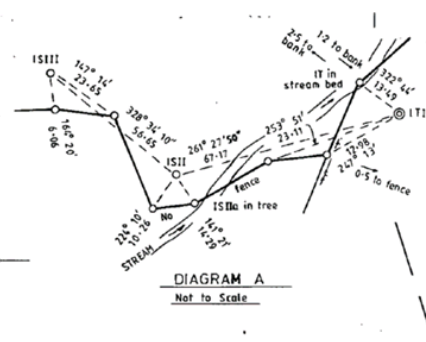
As stated in the ORC report forwarded to the DCC (DP 301458.pdf) the immediate removal of all cattle from this section was ordered. Yet again the report goes on to add that cattle were then being fed out on the 'paper road'.

In the winter of 2019 the river section was again heavily grazed and every single flax planted as some form of remediation the previous year was eaten by the cattle.

On May 13th 2019 the applicant sent an e mail informing us (and the owners of 671 and 673) of their intention to again erect gates. This email was again based on the false and deliberate assertions that the road is a 'paper road', their imagined rights, legal obligations and history of previous illegal gates.

All affected 3 parties (699, 671 and 673) replied with strong objections, all of which have been forwarded to the DCC.

Despite this in early December 2020 the applicant erected the two gates at either end of the section of road and shortly afterwards added the Taranaki gate across our entrance way. This bisects both our property and the public road and is not on the applicant's property.



The signs on the gate are deliberately intimidating and misleading starting with 'BEWARE', again calling the road 'paper' and a 'ULR' and quoting the Trespassers Act 1980 despite the road clearly being public property and indisputably 'formed'.

Again the DCC was immediately notified.

On December 10th the adjoining landowners received a letter via e mail from Gordon Paine representing the Marrafyn Trust - a copy of which has been sent to the DCC, detailing the intention of the applicant to stop the section of Waitati Valley Road, quoting irrelevant acts and issuing hollow legal threats such as criminal charges.

This letter continues to promulgate the falsehoods that the road section is a 'paper road' and that 695 is a 'working farm'.

It is a 16.9 hectare lifestyle block divided into rough thirds as a tree paddock, an 'equestrian centre' and handful of small subdivided pasture lots grazing a mix of cows, sheep and horses.

In 2021 the fence alongside the road at the northern end of the section was moved to the bank of the river and a metal bale feeder placed beside the gate. A large number of large round bales have been stacked up on the road reserve before the Waitati River ford and these were then carted to the bale feeder and the cattle confined to this section almost every day for several

months. The DCC is aware of this.

The applicant presently has a total of five gates erected on the public road and our property with no regard to the boundaries of his title. His fencing on either side of the Waitati Valley road forms a significant encroachment to the road reserve and denies public access to the Semple Burn which runs alongside the road.

The northern gate; Up until recently there was a gate across the bridge over the Semple Burn and on the paper road section between the properties of 671 and 673 Waitati Valley Road. The bridge is rated to 5 tonne gross/3 tonne axle weight and the gate was only to restrict use to light vehicles.

The adjacent ford was formed at the time of subdivision (2000) to allow the passage of larger vehicles and there is no fencing restricting the movement of stock in this section.

It is clearly misleading to suggest that this gate has been simply replaced by the one erected by the applicant in December 2020. Likewise the claim by the applicant in his letter 13 May 2019 that 'This reinstates the southern gate that was there in the past' is equally farcical given the DCC ordered the removal of this gate in 2013.

The property at the northern end of Waitati Valley road is split into two titles - 671 Waitati Valley Road and 1417 Dunedin-Waitati Road and depending on its status in the District plan, would allow the future construction of two houses, both of which have Waitati Valley Road as the only legal access.

The recent compliance with the council order to not close the gates or use the section of road for grazing proves conclusively that this is not a requirement for the management of the property.

The applicants property has at least 11 gates (not including the two road gates in question) which open on to the legal roads and also has a grazing arrangement with the 673 Waitati Valley Road where both cattle and horses are routinely moved up Waitati Valley Road and across the much busier Donald Road*.

(*Donald Road is often shown on maps to describe the section between the Northern Motorway and Waitati Valley Road).

The fact that the rest of the property is somehow manageable without gates across the road again shows the perversity of the arguments presented for closing the section of Waitati Valley Road

In letters from Mr Paine, claims are made that the applicant has been the subject of theft and antagonistic behaviour and that this is the justification for applying to stop the road. This is refuted.

Mr Paine also confirms in writing twice that the applicant is applying to the Environment Court to stop this section of the Waitati Valley Road. This is either a threat to discourage any opposition or signals a clear intent to bypass Council process.

Objections - Our own access and public access.

The section of road is our alternative vehicle access during periods when the Waitati River levels across the ford are high and also when the ford has been blocked by river debris as happens most years - this can be for periods of a few days to 3 weeks in any year.



The applicants gates form an encroachment on both our own title and that of the DCC's public road. The post and rail supporting structure for the southern gate is attached to our fence. The Taranaki gate attaches to this and blocks our entrance to Waitati Valley Road, the other end being within the boundary of our property and is also attached to structures erected by the applicant without our permission within the bounds of our title. These entrance double gates to his tree lot are again on both our property and the Road Reserve which extends 1.2m into the bed of the Semple Burn at this point.

Property owners come and go but public access is a right for all into the future and the northern part of Waitati Valley Road is part of an important public access corridor and future cycle way all the way to Waitati township (see the www.walkingaccess.govt.nz page below). The DCC has already made a significant investment in public access with the recent construction of a high quality footbridge nearby across the Waitati River. There is considerable utility value in this roadway for for both the public and residents. We have fenced off and are completing revegetation of the Esplanade strip on the Waitati river upstream of this bridge in partnership with the Halo Project. We have provided for public access to this.

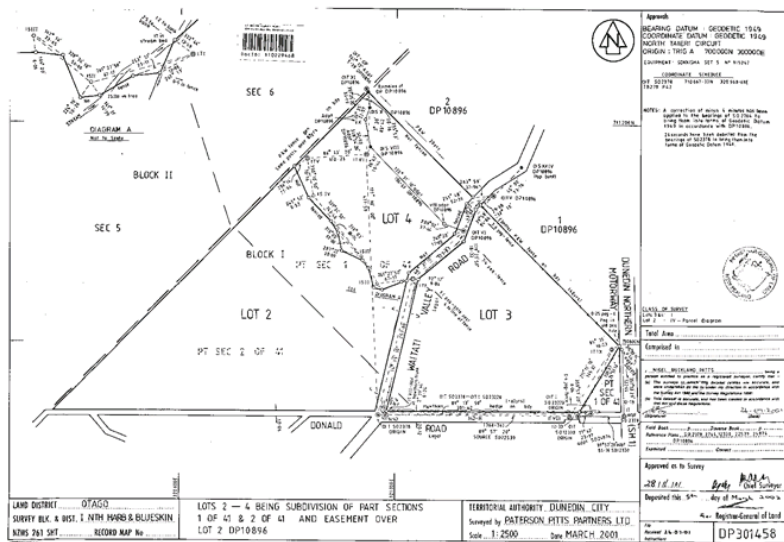
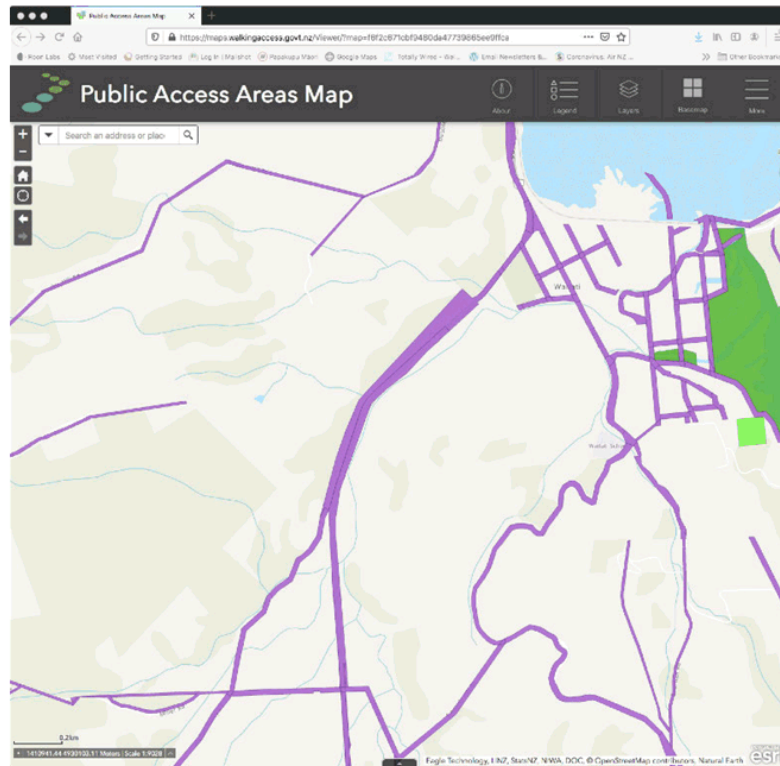
We have also contracted with the Halo Project as part of their Source to Sea program to fence off, exclude cattle and and revegetate a large proportion of the Semple Burn that runs through our property, just upstream from the section discussed in this submission.

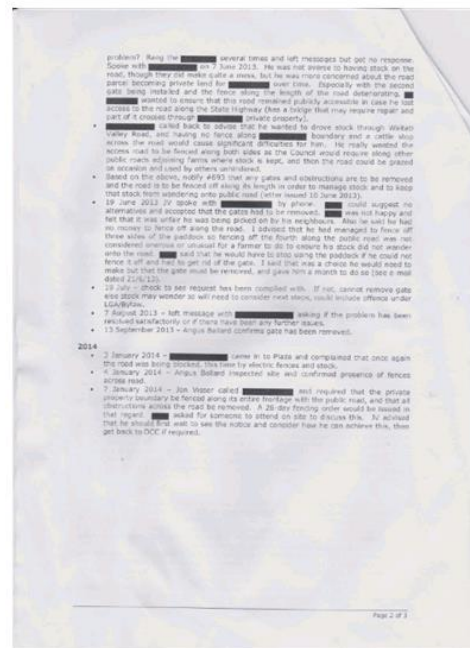
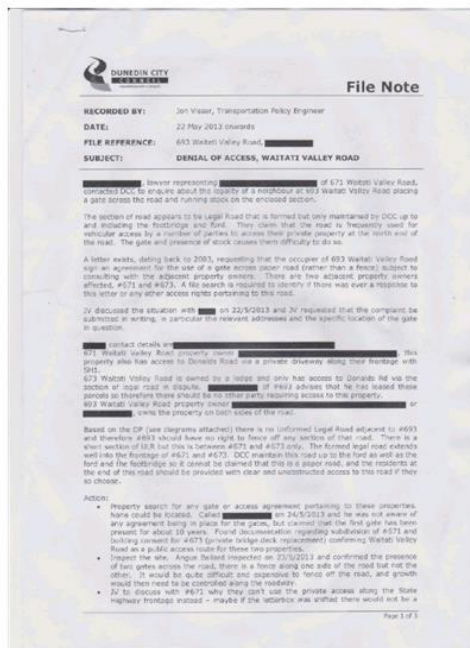
This, as we have described above runs alongside the road and there is the opportunity for the council to work with the Halo Project to enable the regeneration, public enjoyment and use and maintain a high level of water quality in this important catchment that feeds into Blueskin Bay.

We request that the Hearings Committee reject the request and further that the DCC orders the removal of all non-compliant gates and supporting structures and reviews the fencing of this road section to address the public access and encroachment issues we have raised.

John Ransley & Carolyn Guytonbeck

Website
URL





Wendy Collard

From: Monica Bae <Monica.Bae@wrlawyers.co.nz>
Sent: Friday, 11 June 2021 03:07 p.m.
To: Wendy Collard
Cc: [REDACTED]
Subject: RE: Local Government Act 1974 Section 344 – Waitati Valley Road, Waitati
Attachments: IMG_20210305_142644.png

Hi Wendy,

We have been assisting Peter with raising this matter to the DCC. He advises he is away from his computer for the day so he has asked me to send his submission to you on his behalf. I understand he has already sent one yesterday but would like to send a revised submission. We would greatly appreciate it if DCC disregards his original submissions.

Please see the submission below from Peter.

I am writing to strongly oppose the two gates that have been erected recently along our access road by our neighbour Mark Spencer.

We use this road frequently for driving as well as walking. It is too dangerous for our elderly Dad or our young children to walk along while Mark is feeding his cows there every day. They are large animals and the path is narrow. The cows also litter the road with cow manure. While we did not use Waitati Valley Road as our main access at all times, we do not want to lose our safest access in and out of our property.

*The access at the north end of the road comes out at a corner directly onto the highway (see the red circle in the diagram **attached**). The current dedicated main access takes us around Mark's property but it is dangerous to enter and exit the highway from and the bridge is unstable.*

We do also use our leg in driveway for access. However, the bridge to this access (marked in green in the diagram) is prone to flood wash out on the approaches. If our bridge is damaged in a flood it is unlikely we would repair the bridge as it would be costly.

Our business requires us to enter other people's homes all day so we would need to travel with gumboots to open and close the gates due to all the manure that builds up.

I am also very concerned of runoff into the creek as the substantial manure is a few feet from the Semple burn creek. I appreciate this is a matter for the Otago Regional Council but I would still like to repeat this issue to the Dunedin City Council.

*Kind regards,
Peter Clinch*

[REDACTED]

Kind regards,
Monica



Monica Soo-Jin Bae

SOLICITOR

P 3 477 9844
F 3 474 0922

Level 1, Burns House
10 George St
The Octagon
PO Box 803
Dunedin 9054



From 1 July 2018 Wilkinson Rodgers will be asking clients for more information. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT) comes into effect for legal firms on 1 July 2018. This requires us to gather more information from our clients. Find out more about this on our website under AML & CFT by using this [link](#)

From: Wendy Collard <Wendy.Collard@dcc.govt.nz>
Sent: Monday, 31 May 2021 9:29 AM
To: [REDACTED]
Cc: Geoff Mirkin <Geoff.Mirkin@wrlawyers.co.nz>
Subject: Local Government Act 1974 Section 344 – Waitati Valley Road, Waitati

Kia ora Peter and Wendy

The Dunedin City Council has received an application to erect a swing gate across a legal road being Waitati Valley Road, Waitati (attached for your information). The Hearings Committee will consider the above application at a hearing to held on **Friday, 2 July 2021** in the Edinburgh Room, Municipal Chambers (off the Octagon) commencing at **10.00 am**.

Should you wish to provide an comments in support or opposition to the above mentioned application, would you please provide this in writing by either emailing to wendy.collard@dcc.govt.nz or by post to Dunedin City Council, PO Box 5054, Dunedin 9045. The period to make comment closes at **5.00 pm** on 11 June 2021.

Would you also please advise if you will attend the hearing to speak to your comments.

A copy of the agenda including a report from staff will be available via the Dunedin City Council <https://www.dunedin.govt.nz/council/council-meetings/agendas-and-minutes> at least five working days prior to the hearing.

Please note that pending the outcome of this hearing the existing gates are to remain open.

Nga mihi

Wendy

Wendy Collard
Governance Support Officer
Civic
P 03 477 4000 | **DD** 03 474 3374 | **E** wendy.collard@dcc.govt.nz
Dunedin City Council, 50 The Octagon, Dunedin
PO Box 5045, Dunedin 9054
New Zealand
www.dunedin.govt.nz





File Note

RECORDED BY: Jon Visser, Transportation Policy Engineer
DATE: 22 May 2013 onwards
FILE REFERENCE: 693 Waitati Valley Road, Mark Spencer
SUBJECT: **DENIAL OF ACCESS, WAITATI VALLEY ROAD**

Zana Clearwater, lawyer representing [REDACTED] of 671 Waitati Valley Road, contacted DCC to enquire about the legality of a neighbour at 693 Waitati Valley Road placing a gate across the road and running stock on the enclosed section.

The section of road appears to be Legal Road that is formed but only maintained by DCC up to and including the footbridge and ford. They claim that the road is frequently used for vehicular access by a number of parties to access their private property at the north end of the road. The gate and presence of stock causes them difficulty to do so.

A letter exists, dating back to 2003, requesting that the occupier of 693 Waitati Valley Road sign an agreement for the use of a gate across paper road (rather than a fence) subject to consulting with the adjacent property owners. There are two adjacent property owners affected, #671 and #673. A file search is required to identify if there was ever a response to this letter or any other access rights pertaining to this road.

JV discussed the situation with Zana on 22/5/2013 and JV requested that the complaint be submitted in writing, in particular the relevant addresses and the specific location of the gate in question.

Zana's contact details are (03) [REDACTED] 671 Waitati Valley Road property owner = [REDACTED] this property also has access to Donalds Road via a private driveway along their frontage with SH1.

673 Waitati Valley Road is owned by a lodge and only has access to Donalds Rd via the section of legal road in dispute. Mark Spencer of #693 advises that he has leased these parcels so therefore there should be no other party requiring access to this property.

693 Waitati Valley Road property owner = Mark George Lendrum Spencer, [REDACTED] or [REDACTED] owns the property on both sides of the road.

Based on the DP (see diagrams attached) there is no Unformed Legal Road adjacent to #693 and therefore #693 should have no right to fence off any section of that road. There is a short section of ULR but this is between #671 and #673 only. The formed legal road extends well into the frontage of #671 and #673. DCC maintain this road up to the ford as well as the ford and the footbridge so it cannot be claimed that this is a paper road, and the residents at the end of this road should be provided with clear and unobstructed access to this road if they so choose.

Action:

- Property search for any gate or access agreement pertaining to these properties. None could be located. Called Mark Spencer on 24/5/2013 and he was not aware of any agreement being in place for the gates, but claimed that the first gate has been present for about 10 years. Found documentation regarding subdivision of #671 and building consent for #673 (private bridge deck replacement) confirming Waitati Valley Road as a public access route for these two properties.
- Inspect the site. Angus Ballard inspected on 23/5/2013 and confirmed the presence of two gates across the road, there is a fence along one side of the road but not the other. It would be quite difficult and expensive to fence off the road, and growth would then need to be controlled along the roadway.
- JV to discuss with #671 why they can't use the private access along the State Highway frontage instead – maybe if the letterbox was shifted there would not be a

problem? Rang the [REDACTED] several times and left messages but got no response. Spoke with [REDACTED] on 7 June 2013. He was not averse to having stock on the road, though they did make quite a mess, but he was more concerned about the road parcel becoming private land for Mr Spencer over time. Especially with the second gate being installed and the fence along the length of the road deteriorating, Mr Crawford wanted to ensure that this road remained publicly accessible in case he lost access to the road along the State Highway (has a bridge that may require repair and part of it crosses through Mr Spencer's private property).

- [REDACTED] called back to advise that he wanted to drove stock through Waitati Valley Road, and having no fence along Mr Spencer's boundary and a cattle stop across the road would cause significant difficulties for him. He really wanted the access road to be fenced along both sides as the Council would require along other public roads adjoining farms where stock is kept, and then the road could be grazed on occasion and used by others unhindered.
- Based on the above, notify #693 that any gates and obstructions are to be removed and the road is to be fenced off along its length in order to manage stock and to keep that stock from wandering onto public road (letter issued 10 June 2013).
- 19 June 2013 JV spoke with Mark Spencer by phone. Mark could suggest no alternatives and accepted that the gates had to be removed. Mark was not happy and felt that it was unfair he was being picked on by his neighbours. Also he said he had no money to fence off along the road. I advised that he had managed to fence off three sides of the paddock so fencing off the fourth along the public road was not considered onerous or unusual for a farmer to do to ensure his stock did not wander onto the road. Mark said that he would have to stop using the paddock if he could not fence it off and had to get rid of the gate. I said that was a choice he would need to make but that the gate must be removed, and gave him a month to do so (see e-mail dated 21/6/13).
- 19 July - check to see request has been complied with. If not, cannot remove gate else stock may wander so will need to consider next steps, could include offence under LGA/Bylaw.
- 7 August 2013 - left message with [REDACTED] asking if the problem has been resolved satisfactorily or if there have been any further issues.
- 13 September 2013 - Angus Ballard confirms gate has been removed.

2014

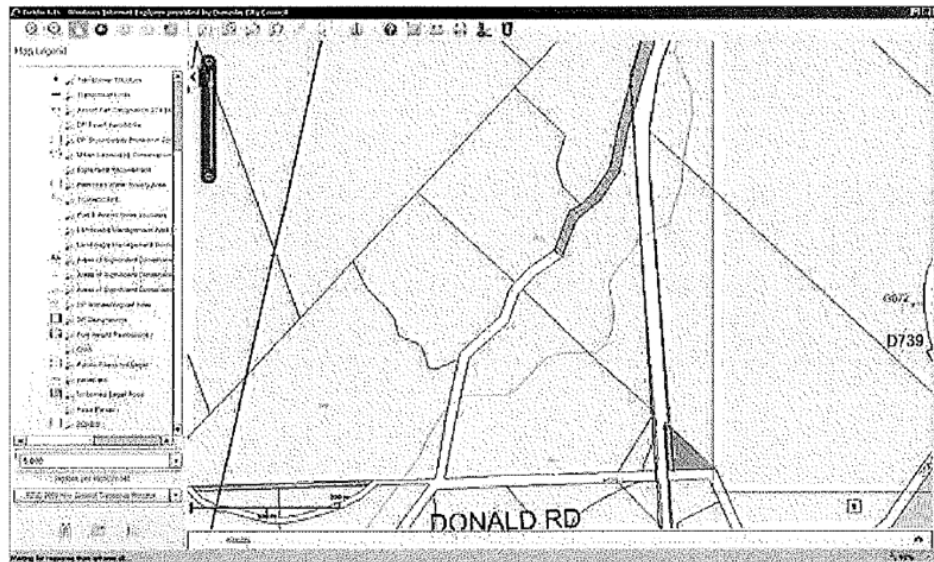
- 3 January 2014 - [REDACTED] came in to Plaza and complained that once again the road was being blocked, this time by electric fences and stock.
- 4 January 2014 - Angus Ballard inspected site and confirmed presence of fences across road.
- 7 January 2014 - Jon Visser called Mark Spencer and required that the private property boundary be fenced along its entire frontage with the public road, and that all obstructions across the road be removed. A 28-day fencing order would be issued in that regard. Mark asked for someone to attend on site to discuss this. JV advised that he should first wait to see the notice and consider how he can achieve this, then get back to DCC if required.

Jenny Lapham

From: Jon Visser
Sent: Friday, 24 May 2013 05:30 p.m.
To: [REDACTED]
Subject: Waitati Valley Road access

Hi Mark,

Thank you for your time yesterday. As discussed by phone, we have received an enquiry regarding the gates across Waitati Valley Road. I have attached a copy of the relevant part of the District Plan, which shows that there is a section of "Unformed Legal Road" (commonly referred to as "paper road"), but this does not commence until well past your property.



Based on the attached plan, we are technically obliged to treat the road that runs through your parcels as a privately maintained public road. Technically any member of the public, which could include a neighbour, courier, fire service etc., should be provided with "clear unobstructed access" to such a road.

We have inspected the site and are now considering what options exist, including consideration of historic access and usage. I hope to get back to you early next week with our thoughts.

Kind regards,

Jon Visser
Transportation Policy Engineer, Transportation Operations
Dunedin City Council

50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000; Direct: 03 474 3704; Mobile: 021 917 082; Fax: 03 474 3789
Email: jon.visser@dcc.govt.nz



10 June 2013

50 The Octagon, PO Box 5045, Moray Place
Dunedin 9058, New Zealand
Telephone: 03 477 4000, Fax: 03 474 3488
Email: dcc@dcc.govt.nz
www.dunedin.govt.nz

Mark Spencer
693 Waitati Valley Road
R.D. 2
Waitati 9085

Dear Mark

GATES ACROSS WAITATI VALLEY ROAD

Further to our telephone discussion on 23 May 2013 and my e-mail of 24 May 2013, I have now had the opportunity to consider the situation and discuss this with other affected parties.

The matter of having a gate across the road was raised with you about seven years ago and you were asked at that time to apply formally for approval to do so. At that time it was thought that this road was "unformed legal road" (also known as a "paper road") which could potentially be closed off in that manner.

It has since been identified that this section of Waitati Valley Road is not "unformed legal road" but a public road that is partially maintained by the Council and partially privately maintained. The road provides access to numbers 671 and 673 Waitati Valley Road, and these other properties are entitled to have unobstructed access to this road. Based on the available information, it would be considered inappropriate for you to close off this section of road with gates.

The only apparent solution would be for you to fence off both sides of the road (along the property boundary) in order to ensure that stock does not wander onto the road. The Council would not object to you occasionally driving stock across or along Waitati Valley Road or grazing stock on the grassed berms of the road using temporary fencing, as long as full unobstructed access is maintained to the public road at all times.

The Council acknowledges that this situation has existed for a number of years and may, therefore, take some time to rectify. If you could consider the issues raised above and then contact me to discuss them that would be appreciated.

Yours sincerely



Jon Visser
Transportation Policy Engineer
Transportation Operations

John Ransley & Carolyn Guytonbeck
669 Waitati Valley Road
Postal address - 217 Stuart Street, Dunedin.

Dunedin 17 JUN 2013

17 JUN 2013

Sunday, 16 June 2013

Mark Spence
693 Waitati Valley Road
Waitati, Dunedin.

cc [REDACTED] DCC.

Re: Gates on Waitati Valley Road

Dear Mark,

While we have discussed this in the past with you, we feel that you may well have misinterpreted our position on this.

We do not consent to the erection of permanent gates and fences across this road. We request that you remove the gate and board fence attached to the northern corner of our property.

It is not unreasonable that you occasionally graze the roadside, but the continual closure by gate and electric fence is not. We've checked with the Dunedin City Council and this section of road, while not presently maintained by them is still officially a public road. As such, you are still obligated to maintain the existing boundary fences on either side. In a perfect world we should have a working agreement between all involved parties on the maintenance of the road and this is in fact recommended in the original subdivision documents. You'll find this in your own title documents.

Several parties use this road:

It provides our only exit whenever the river levels are up and we can't cross the ford. We use it daily to check on our cattle grazing at [REDACTED]. Over winter it is also used for daily feeding out.

It is the original access to and from [REDACTED] property and the shortest and most direct route from their house to their letter box - there is no reason why they should not be free to use this. It's my understanding you have discussed this with [REDACTED] and he has made it clear to us that he does not want these gates. The fact that they have a second access does not diminish their rights - you have several routes on to your own property and no-one is blocking these off.

It is also the only access to the block owned by Alan Birchall - we all know that this will be sold one day and free access will be critical to the sale. Your present leasing arrangement with Alan does not alter the status of the road.

While we all value our privacy, it's worth noting that as a public road, everyone in the community is entitled to use it and access the adjoining Semple Burn - there could be a worthwhile amenity value for the wider community and it would be fair to expect that this will be considered as a consequence of the council's recent investment in the new footbridge across the Waitati River. Given the increase in cycling and policies associated with it, the free use of this road for this group should also be taken into account.

We do accept that you have had an issue with fencing in the hill paddock next to the road for the last 12 years but given the other 3 sides are all now well fenced, it would not be unreasonable that you look to repair the gaps in the existing fence on the 4th side to contain cattle or sheep while they are in this paddock rather than treating the road as a permanent extension to this paddock. Likewise with the lower paddock. While the erection of gates is a cheaper option for you, there is a downside for everyone else.

Our request does not deny you use of the road - what we are asking for is just consideration of other users. No-one is blocking your access, so it is only fair that you do not do this to others.

Regards,

John Ransley & Carolyn Guytonbeck.



50 The Octagon, PO Box 5045, Moray Place
Dunedin 9058, New Zealand
Telephone: 03 477 4000, Fax: 03 474 3488
Email: dcc@dcc.govt.nz
www.dunedin.govt.nz

John Ransley and Carolyn Guytonbeck
217 Stuart Street
Dunedin 9016

Dear John and Carolyn,

GATES ON WAITATI VALLEY ROAD

Thank you for your letter dated 17 June 2013 regarding gates across Waitati Valley Road.

I can confirm that the Council has requested that any such gates be permanently removed in order to provide unobstructed public access to this road.

The adjacent property owner has been given until 19 July to either fence off along the road or to remove any stock from the adjacent paddocks such that the gates can be safely removed.

Yours sincerely,



Jon Visser
Transportation Policy Engineer
Transportation Operations

Dunedin City Council

John Ransley & Carolyn Guytonbeck
669 Waitati Valley Road
Postal address - 217 Stuart Street, Dunedin.

Monday, 17 June 2013

17 JUN 2013

Dunedin City Council

Re: Gates on Waitati Valley Road

Please find attached a letter sent to Mark Spence about the erection of gates on the northern section of Waitati Valley Road.

We have previously spoken with someone in the Roading Department about this and tried to resolve the problem but have made no progress. I understand Rob Crawford has also recently approached you over this and this has resulted in DCC correspondence with Mark Spence.

Suffice to say we want to make it clear that we don't consent to the present gate erected across the public road on the northern corner of our boundary and even less so to Mark's proposal for a second further along. The only reason given for this is that it will cost him less than maintaining his boundary fences. These have been an ongoing problem for 12 years.

Mark appears to have sufficient resources to be building up a commercial equestrian operation on the property with new buildings and internal fences and it appears he considers that the public road should just be an extension of his paddocks with no regard to other users.

We are not sure if the council is able to do anything and appreciate this may only good on record but do let us know if you either need to know more or are able to take any action.

Regards,


John Ransley & Carolyn Guytonbeck.

Jenny Lapham

From: Jon Visser
Sent: Friday, 21 June 2013 10:09 a.m.
To: [REDACTED]
Subject: Record of phone conversation

Hi Mark,

This e-mail is to confirm the telephone conversation we had on 19 June.

You advised that you would need some time to either fence off the top paddock along the public road or remove stock from it so that they will not wander onto the road, and I agreed to give you one month to do so. You have fenced off three sides of this paddock so fencing off the fourth side along the public road is not considered to be an onerous or unusual request compared to the expectations on other farms in the district.


If the gate is not permanently removed by Friday 19 June, then the Council may fence off the road and remove the gate on your behalf, with all costs to be recovered from you. I trust you will attend to this matter so that no further action will be required.

Yours faithfully,

Jon Visser
Transportation Policy Engineer, Transportation Operations
Dunedin City Council

50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000; Direct: 03 474 3704; Mobile: 021 917 082; Fax: 03 474 3789
Email: jon.visser@dcc.govt.nz



 Please consider the environment before printing this e-mail

Jenny Lapham

From: Angus Ballard
Sent: Friday, 13 September 2013 09:26 a.m.
To: Jon Visser
Subject: Emailing: DSC04235.JPG
Attachments: DSC04235.JPG

Hi Jon,

The gate at 671 Waitati Valley Road has been removed.

Regards,

Angus Ballard
Asset Supervisor, Transportation Operations
Dunedin City Council
50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000; Fax: 03 474 3789

Email: angus.ballard@dcc.govt.nz



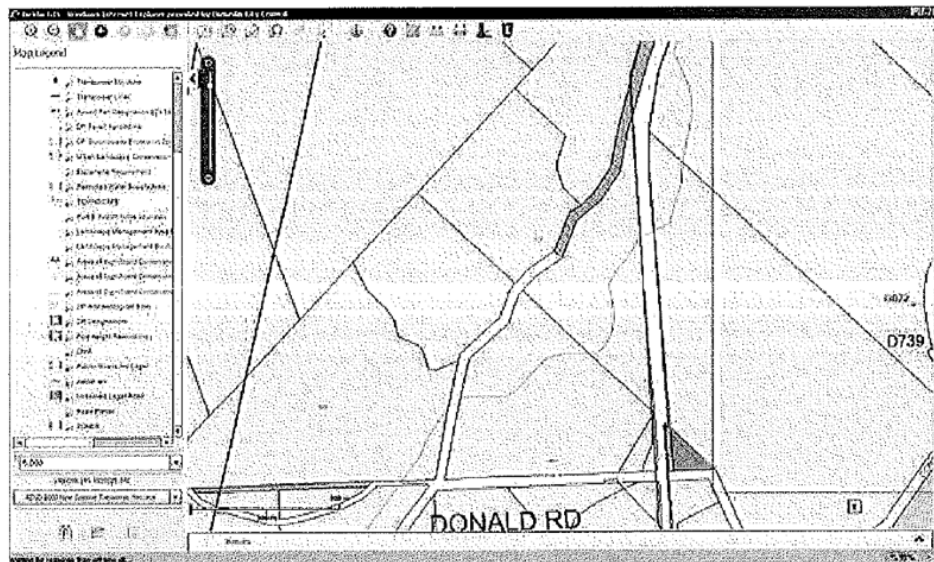
Please consider the environment before printing this e-mail

Jenny Lapham

From: Jon Visser
Sent: Friday, 24 May 2013 05:30 p.m.
To: [REDACTED]
Subject: Waitati Valley Road access

Hi Mark,

Thank you for your time yesterday. As discussed by phone, we have received an enquiry regarding the gates across Waitati Valley Road. I have attached a copy of the relevant part of the District Plan, which shows that there is a section of "Unformed Legal Road" (commonly referred to as "paper road"), but this does not commence until well past your property.



Based on the attached plan, we are technically obliged to treat the road that runs through your parcels as a privately maintained public road. Technically any member of the public, which could include a neighbour, courier, fire service etc., should be provided with "clear unobstructed access" to such a road.

We have inspected the site and are now considering what options exist, including consideration of historic access and usage. I hope to get back to you early next week with our thoughts.

Kind regards,

Jon Visser
Transportation Policy Engineer, Transportation Operations
Dunedin City Council

50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000; Direct: 03 474 3704; Mobile: 021 917 082; Fax: 03 474 3789
Email: jon.visser@dcc.govt.nz

Jenny Lapham

From: Jon Visser
Sent: Friday, 7 February 2014 01:56 p.m.
To: [REDACTED]
Subject: Fencing Notice
Attachments: Document2.docx

Hi Mark,

As discussed by telephone today, please find attached a formal fencing notice to resolve this issue.

Kind regards,

Jon Visser
Transportation Policy Engineer, Transportation Operations
Dunedin City Council

50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000; Direct: 03 474 3704; Mobile: 021 917 082; Fax: 03 474 3789
Email: jon.visser@dcc.govt.nz



 Please consider the environment before printing this e-mail

7 February 2014

Mark Spencer
693 Waitati Valley Road
RD 2
Waitati 9085

Dear Mark,

OBSTRUCTION OF WAITATI VALLEY ROAD

The Council has again started to receive complaints from the public that you are blocking off access to Waitati Valley Road, this time with electric fences. A Council Officer has confirmed the presence of electric fences spanning across the road.

As advised in previous correspondence, the Council does not consider it appropriate to block off access to this public road. Further, the Council considers that extending single-strand electric fences across a public road is a safety hazard for road users and these must be removed immediately.

This is the second time that this same issue has been raised, and therefore a more effective solution is required to prevent this from recurring. Pursuant to section 353 of the Local Government Act 1974 (attached), the Council hereby requires you to provide an adequate fence, i.e. a multi-strand or mesh farm fence, between any location where you are carrying out a grazing activity and the public road (as indicated in the attached diagram). The fences are to be constructed either on the property boundary or within private property as may be required depending on the terrain, as long as the outcome is that there are no obstructions or stock on the public road. The fences are to be erected within 28 days of this notice. Failure to do so may lead to a prosecution under the Act and/or the Council carrying out this work at your expense.

Erecting fences to control your grazing activity on privately owned property, either as owner or as occupier of the land, is your responsibility. It would not be appropriate for Council Officers to provide on-site advice on how you can carry out such activities on private land. If there is any area where you are unable to construct a fence as required above and you wish to propose an alternative solution, e.g. a gate on unformed legal road or a fence within the road corridor, please submit a detailed proposal for the Council to consider and we could meet on-site then to discuss this matter. The Council will not consider any gates or fences across the yellow-shaded area marked as "formed legal road" in the attached diagram.

Yours faithfully,

Jon Visser
Transportation Policy Engineer

Local Government Act 1974

353 General safety provisions as to roads

The council shall take all sufficient precautions for the general safety of the public and traffic and workmen employed on or near any road, and in particular shall—

...

- (c) whenever the public safety or convenience renders it expedient, require the owner or occupier of any land not separated from a road by a sufficient fence to enclose the same by a fence to the satisfaction of the council.

John Ransley & Carolyn Guytonbeck
669 Waitati Valley Road
Postal address - 217 Stuart Street, Dunedin.
[REDACTED]

Tuesday, 29 April 2014

Dunedin City Council
Jon Visser - Transportation
cc: Peter Hamlin - Animal control

Re: Waitati Valley Road - access and fencing.
You letter June 24th 2013 and communication earlier this year.

Dear Jon, (and Peter)

You will be as frustrated as us to learn there has still been no resolution of this problem. While the gates have been removed, Mark Spence's stock are still wandering at will as boundary fences on either side of the road are still in complete disrepair and ineffective. The paddocks they are in are eaten out and so the issue will just get worse over winter.

Electric tape has been erected at the northern end of the road but this does not address the on-going problem of stock constantly on the road between the ford and [REDACTED] properties which restricts access and degrades the road. The cattle are free to (and have) wander up the main Valley road and have nothing to stop them getting on SH1 - the northern motorway.

We have recently had the road graded but the combination of wet weather and cattle is quickly reducing the road to a quagmire.

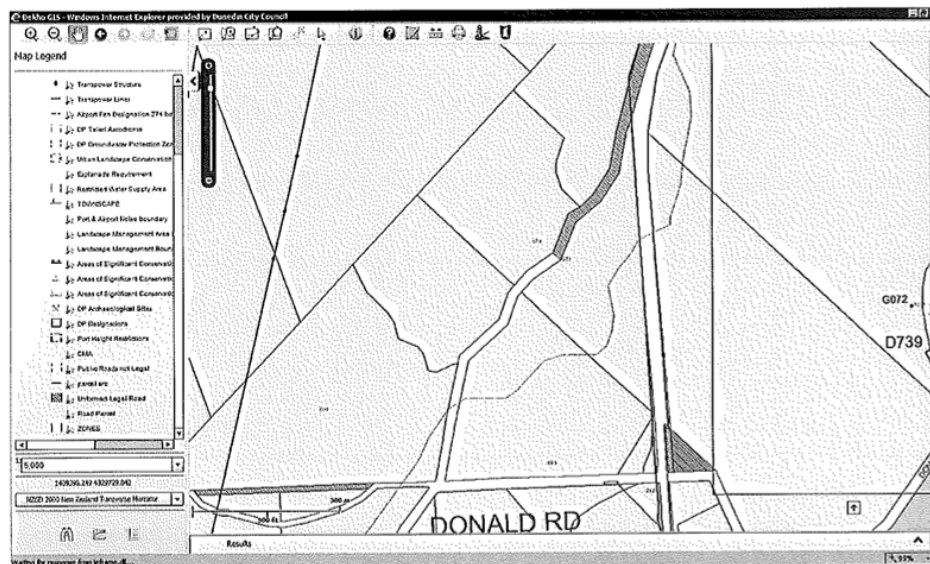
The simple solution is for Mark Spence to repair his fences to a cattle proof standard. I understand you have already suggested he do this, but at this stage this has not happened and there is no immediate indication that it will.

I'm happy to meet with you on-site if that would help. We look forward to your reply.

Regards,



John Ransley & Carolyn Guytonbeck.





 17 October 2019

Michael Tannock
Dunedin City Council
PO Box 5045
DUNEDIN 9054

BY EMAIL
michael.tannock@dcc.govt.nz

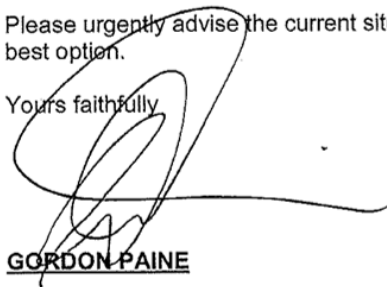
RE: SPENCER – NAYLOR – WAITATI VALLEY ROAD

You will recall meeting with me, Mark and Annie on 30 May last to discuss the issue of gates on the paper road. It has been several months, and I have been copied into all the correspondence, and I note there has been no response from you. This matter cannot drift indefinitely and it seems quite clear to me that my clients are able, should they choose, to put gates across the road providing they are unlocked to enable access by neighbours who may on rare occasions wish to use the road.

I have advised them of their rights to apply to have the road stopped which of course would be the easiest solution as there is no need for any other neighbours to use it. My clients are still contemplating that action or judicial review of the council's (in) decision as to the gates.

Please urgently advise the current situation so I can advise my clients on their best option.

Yours faithfully

A large, stylized handwritten signature in black ink, appearing to be "Gordon Paine", written over the "Yours faithfully" text.

GORDON PAINE



10 December 2020

BY EMAIL
hello@totallywired.nz

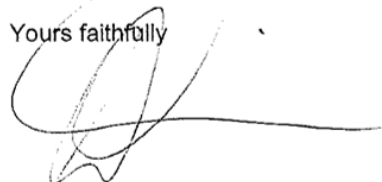
John Ransley
669 Waitati Valley Road
WAITATI 9085

RE: 693 WAITATI VALLEY ROAD (SPENCER & NAYLOR)

I have been retained by the owners of 693 Waitati Valley Road (Marrifin Trust) to lodge an application with the Environment Court for stopping of the unformed paper road which bisects their property. Whilst it is a public/paper road it runs through private property and through a working farm. My clients have, as allowed by law, erected gates on the road to prevent stock moving freely between properties and ultimately ending up on the main highway which would or could cause serious damage if not death in the course of an accident. My client's property is a working farm and there will be stock/animals throughout the farm including on the road. My clients have asked that the gates be left by those using the road but to date that has fallen on deaf ears. The gates must be left as they are found. Failing to do so can be an offence under the Trespass Act 1980. Recent criminal vandalism and wilful damage have led to police involvement and I understand the police have a suspect in mind who will be arrested and prosecuted.

I am sending this to you both by email and by regular mail for your information. Any further vandalism, criminal damage, or failure to leave the gates in the position that they are now, will result in criminal charges. I will be in touch with the road stopping documentation in the near future.

Yours faithfully



GORDON PAINE

Jenny Lapham

From: Kimberley Lamond
Sent: Thursday, 17 December 2020 10:31 a.m.
To: Simon Drew
Cc: Michael Tannock; Karilyn Canton
Subject: Mr Clinch - Waitati Valley Rd

Importance: High

Hi Simon

Had a reminder from Vivienne this man needs a phone call ASAP please.

Thank you
Kim

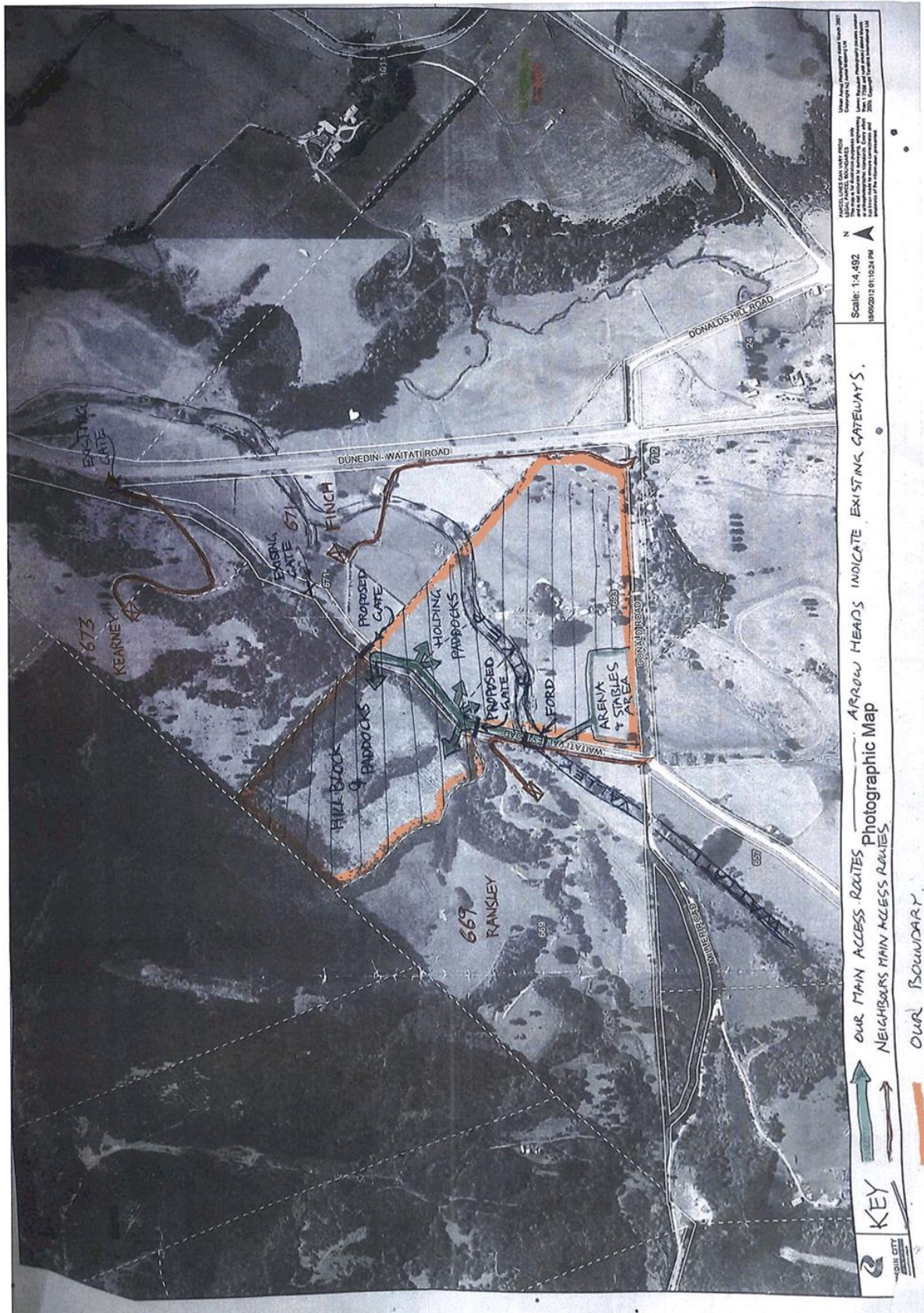
From: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Sent: Monday, 14 December 2020 5:00 p.m.
To: Merrin Dougherty <Merrin.Dougherty@dcc.govt.nz>; Jeanine Benson <Jeanine.Benson@dcc.govt.nz>
Cc: Kelly Taylor Covey <Kelly.TaylorCovey@dcc.govt.nz>; Simon Drew <Simon.Drew@dcc.govt.nz>; Kimberley Lamond <Kimberley.Lamond@dcc.govt.nz>
Subject: Mr Clinch - Waitati Valley Rd

Hi Merrin/Jeanine
Regarding the Waitati Valley road gate complaints, I've spoken to 2 complainants, both Mr Clinch and Mr Ransley today.
I'm waiting on advice to be confirmed by Karilyn at Legal then will know how to proceed.

Thanks
Mike

Michael Tannock
NETWORK ASSETS TEAM LEADER
TRANSPORT

P 03 477 4000 | E michael.tannock@dcc.govt.nz
Dunedin City Council, 50 The Octagon, Dunedin
PO Box 5045, Dunedin 9054
New Zealand
www.dunedin.govt.nz





Our Reference: A1425622

17 December 2020

John Ramsley
669 Waitati Valley Rd
Waitati
Email: [REDACTED]

Dear Mr Ramsley

**LGOIMA Local Government Official Information and Meetings Act 1987 (LGOIMA)
Request – Water Discharge**

We refer to your information request dated 11 December 2020 for a copy of report file IN18.0603. A copy of the report is attached.

You will note the attachments include a number of redactions. These redactions are necessary to protect the privacy of natural persons.

The redactions are in accordance with sections 7(2)(a) of the Local Government Official Information and Meetings Act 1987.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you have any queries concerning the above, please do not hesitate to contact me.

Yours sincerely



James Gribble
Administration Officer- Legal





File IN18.0603
EN.RMA.18.0063

MEMORANDUM

To: Martin King, Peter Kelliher, Sarah Gardner
From: Byron Pretorius, Environmental Officer
Date: 10 September 2018
Re: Recommendation for Enforcement Action as result of stock in waterway.

Purpose

To briefly outline the events that occurred and make a recommendation for enforcement action.

Property Information

Landowner: [REDACTED]
Physical Address: 693 Waitati Valley Road, RD 2, Waitati, 9085
Postal Address: 693 Waitati Valley Road, RD 2, Waitati, 9085

GPS Co-ordinates: NZTM E1409705 N4929555
Farm Type: Horses, Beef Cattle

Alleged Offender(s): [REDACTED]
Physical Address: 693 Waitati Valley Road, RD 2, Waitati, 9085
Postal Address: 693 Waitati Valley Road, RD 2, Waitati, 9085
Sex: Male
Date of Birth: [REDACTED]

Background

ORC had received notification on 24 August 2018 that a herd of cattle had been grazing in a small area along the Semple Burn for approximately three months. The complainant had described the cattle as being up to their chests in mud and that the paddock itself had no grass left within it. The complainant also stated that the effluent is being directly discharged into the river and that the bank was being destroyed.

History of the [site/company/individual- define]

No previous enforcement action taken against [REDACTED] can be found.

Investigation into the incident

Date of Inspection: 4 September 2018
Inspecting Officer: Byron PRETORIUS
Reason for inspection: Complaint

Summary of inspection:

- Byron PRETORIUS and Fionna FRASER both attended the incident inspection.
- [REDACTED] was unavailable at the time of inspection. Met with [REDACTED] onsite.
- [REDACTED] stated that cattle had access to approximately thirty metres of the Semple Burn.
- [REDACTED] stated that ten cattle were put in the paddock approximately four months prior to the inspection. Three cattle were removed approximately one month prior to the inspection for calving.
- [REDACTED] then directed us to the location where the cattle were being kept.
- Upon arrival, seven cattle were positioned between the Semple Burn and the Waitati Valley Road roadside (NZTM E1409705 N4929555).
- The landowners had been feeding the cattle hay/straw along the roadside.
- The scale of pugging was severe and extensive. The cattle had access to the Semple Burn and had established a number of crossings through the Semple Burn, where more localized damage to the river's banks was evident (see photographs showing this).
- Clarity tube readings were captured both upstream and downstream. Upstream (NZTM E1409649 N4929521) result: 74cm; downstream (NZTM E1409840 N4929715) result: 38cm; corresponding to a change of turbidity/visual clarity of 51.3%.
- Water samples were captured both upstream and downstream. Sample results are yet to be received by Hills Laboratories.
- Cattle had access to approximately 186 metres of the Semple Burn.
- Pugging of the land and river banks was more extensive within the area closest to the road where the cattle were being fed (GPS NZTM E1409725 N4929573).
- PRETORIUS and FRASER met with [REDACTED] upon return.
- PRETORIUS received a call from [REDACTED] on 5 September 2018 at 09:27AM. [REDACTED] outlined the situation.
- PRETORIUS called [REDACTED] on 10 September 2018 at 15:18PM. [REDACTED] outlined the action that he has taken.

Explanation provided:

- [REDACTED] stated that there were no other paddocks to hold the cattle.
- [REDACTED] stated that the horses were priority and that they required all the remaining paddocks.

- [REDACTED] stated that in their current position, the cattle required the Semple Burn to drink from.
- [REDACTED] stated that piping water from the Semple Burn to an adjacent area would be too expensive.
- [REDACTED] stated that he typically feeds the cattle up on the 'plateau' away from the Semple Burn. The rain and the fact that the cattle had pugged the track extensively meant that vehicle could no longer gain access to the plateau for feeding.
- [REDACTED] stated that he can't see what he is doing wrong. [REDACTED]
[REDACTED]
- [REDACTED] stated that he did not know where to put the cattle.
- [REDACTED] stated that there was nowhere for the cattle to go and that he may have to slaughter them.

Directions given by the Enforcement Officer:

- [REDACTED] were all instructed to remove the cattle from the Semple Burn immediately, at the time of inspection.
- [REDACTED] was instructed to remove the cattle immediately, during the phone call on 5 September 2018.

Action taken by alleged offender:

- [REDACTED] stated during the phone conversation on 10 September 2018 that the cattle have been fenced off from the area along the Semple Burn that they previously had access to.
- Cattle still have access to the Semple Burn but are restricted to the area along the track.
- Cattle are being fed on the paper road.

Water Quality Samples

Sample results are yet to be received.

Yes ☒

No ☐

Breach/offence committed

- ☒ Pugging
- ☒ Erosion
- ☐ Slumping
- ☒ Change of visual clarity

Regional Rule(s) Breached

Section 13.5.1.8A The disturbance of the bed of any lake or river, or any Regionally Significant Wetland by livestock, excluding intentional driving of livestock, and any resulting discharge or deposition of bed material, is a permitted activity, providing it does not:

- (b) cause or induce noticeable slumping, pugging or erosion; or*
- (c) result in a visual change in colour or clarity of the water.*

Is the activity governed by a Resource Consent, a National Environmental Standard or Regulation?

Yes ☐

No ☒

If Yes, provide detail:

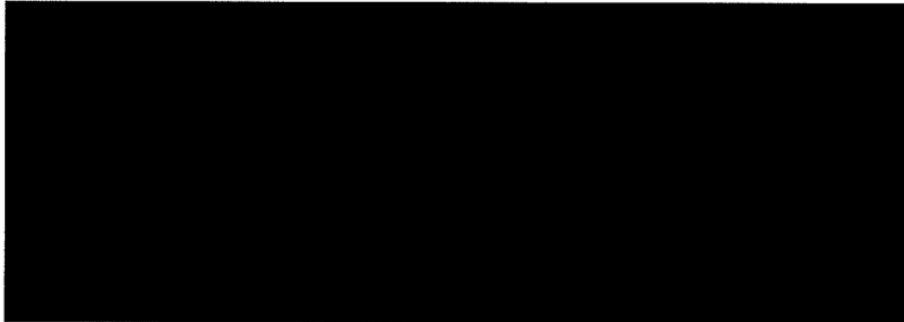
Attached

- ☒ Notebook entry / file notes
- ☒ Sketch / aerial map /GPS data
- ☐ Interview(s)/ Statements

Recommended Enforcement Action


Recommended actions:

Given that [REDACTED] had stated to PRETORIUS during the phone conversation on 10 September 2018 that cattle had been excluded from predominance the Semple Burn and now only have access to the Semple Burn along the farm track;



Byron Pretorius
Environmental Officer

Date: 10 September 2018


Team leader - Freshwater P
19.9.18 Enforced

Comment:

: Approved / Not-Approved

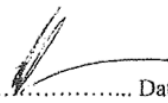


..... Date: 25/9/18

Martin King
Manager Environmental Services

Comment:

Approved / Not-approved

 Date: 28/9/18
..... Date:
Peter Kelliher
Legal Counsel

Comment:

Approved / Not approved

..... Date:
Sarah Gardner
Chief Executive



21 December 2020

Marrafin Trust
Attn Mr M Spencer
693 Waitati Valley Road
RD 2
Waitati 9085

Dear Sir

GATE – WAITATI VALLEY ROAD

Thank you for taking my phone call on Friday regarding the recently installed gate on Waitati Valley Road, shown marked x on the aerial photograph below.

DCC has reviewed the situation with respect to this gate and unfortunately, DCC now requires that the gate is removed. The reasons for this are detailed below.

The Local Government Act 1974 s344 states:

- (1) *The Council may, in writing, permit the erection of a swing gate...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. "

In this case, our legal review has clarified that the two situations a and b specified above do not apply, as it is practicable and reasonable to fence the road (these fences already exist), and the road is not constructed over private land. DCC therefore is not able to permit the erection of this gate.

We are aware of your stated reasons for wishing to install the gate. We also acknowledge that over an extended period, you requested permissions to action this installation. No permission to install the gate was given and I have allowed sufficient time in the hope that you might come to agreement with your neighbours. However, the gate was installed and is now the subject of ongoing objections.

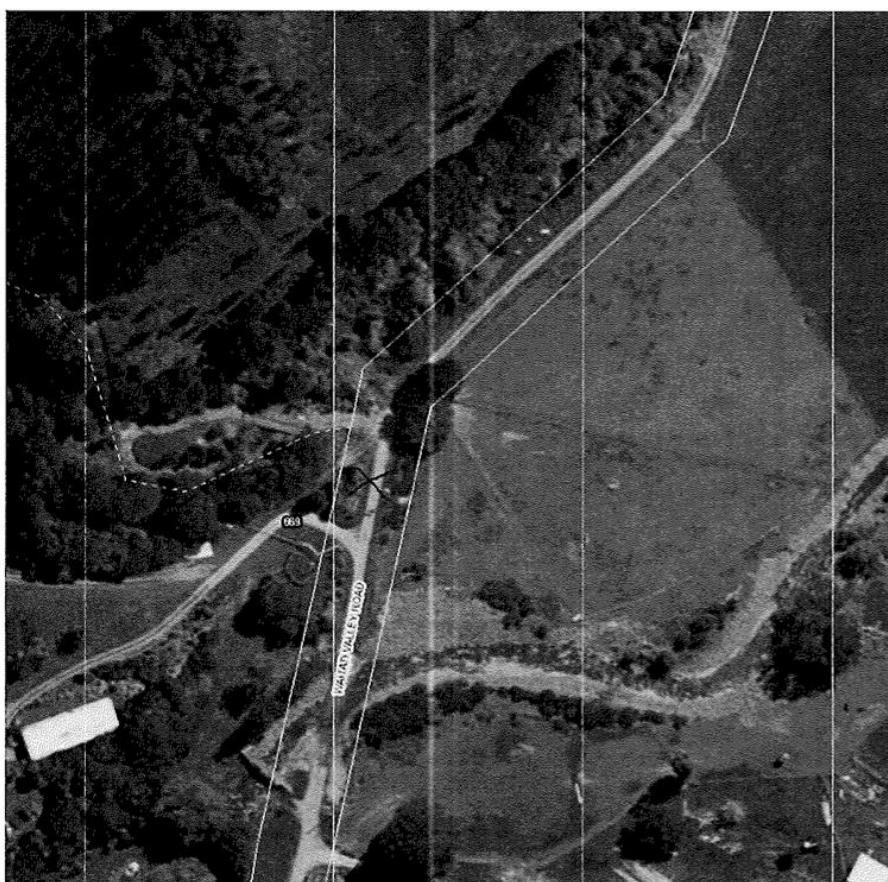
The gate has been installed in breach of section 344(6) of the Local Government Act 1974 and the Dunedin City Council's Roadway Bylaw 2020.

Council require the gate is removed within the next week, and if it is not removed within that timeframe, then Council's intention is to remove the gate and/or consider other enforcement options.

Yours Faithfully



Michael Tannock
NETWORK TEAM LEADER, TRANSPORT



Jenny Lapham

From: John Ransley [REDACTED]
Sent: Sunday, 24 January 2021 09:28 a.m.
To: Simon Drew; Michael Tannock
Cc: Peter Clinch
Subject: Gate - Waitati Valley Road Encroachment
Attachments: CCE_20201210_172414_0001.pdf

Hi Simon,

Are you aware that these gates - there are two - have been the subject of long and protracted disputes since around 2012 and there have been previous removal orders from Council. We have been dealing with this via Micheal Tannock. (see below)

The 3 adjoining property owners all have registered repeated and strong objections.

The stated intention of the owners of 693 is to permanently close and stop the road (see attached letter) denying established access to both the public and adjoining landowners - **the road is a formed public road** - not paper - (in the DDC's own planning documentation) and the road section provides primary access for all three owners.

There is a written agreement in place between the 3 owners and a road maintenance program is ongoing with recent drainage work, spraying and clearing of the verges.

Please phone me at your earliest possible convenience [REDACTED]

Ngā Mihi

John Ransley & Carolijn Guytonbeck

669 Waitati Valley Road
Dunedin 9085
Te Waipounamu
Aotearoa New Zealand

[REDACTED]

Hi Michael,

Thanks again for your response - All 3 neighbours - Peter and Wendy Clinch, Scott Kearney and ourselves all strongly object to the gates, and the road stopping proposal.

We would like the council to enforce the prompt removal of the gates and posts from the shared public roadway. The council previously did the same in 2014 when gates were erected in the same position and also enforced subsequent removal of the electrified tapes which replaced them.

For the record here are our 3 responses to the request for permission to erect the gates sent to us last year - 13/5/19. There has been no change to our positions.

I'm sorry but I can't give you my permission to use our road as outlined in your email.

As you know my elderly Dad George has a number of health issues including heart problems, anxiety, osteoarthritis, sleep apnea and is very sensitive to lights from the highway and noises. His peaceful unobstructed walks up that road are crucial to his well being. Additionally, our two children aged 8 and 12 use the road often, either on long walks up the valley or to the letterbox. Sometimes the children are on bikes and this way is far safer than the other road off the highway.

As we don't see a legitimate reason to be grazing and/or feeding on our road we strongly oppose this. Maybe we could tether our goats to graze the edges once a month or come up with a different plan that we all agree on?

Kind regards,

Peter Clinch

Spence,

I object strongly to your proposal to put gates across Waitati Valley Road as proposed in your email.

I use that section of the road constantly via vehicle or horseback and refuse to be inconvenienced by you putting in gates under the guise of security and health and safety. Nor should any of the neighbours or guests that come to visit them.

I am not negotiable on this.

Regards,

Scott

The section of Waitati Valley Road is a Public Road - not a 'paper road'. You already are well aware of this with previous and repeated council orders for you to remove gates in 2013, subsequent orders to remove electric tapes used as gates, remove stock confined to the road over months, cease using the road as a winter feeding platform and fencing the boundaries as required.

The portion of road is not 'yours'. Maintenance issues are clearly dealt with in the original subdivision and purchase documents which you have from 2001 onwards. Maintenance does not include either sustained grazing or your removal of several truckloads of road material to your own property in late 2018. The rock and gravel was placed on the road in agreement with, and shared cost by the land owners and access users at 669, 671 and 673 and the ORC in 2017.

This was a reinstatement of the road after damage caused both by your using it as a feeding platform and subsequent scouring by the 2017 flood event. By raising the road level we have compensated for the raised level in your adjacent paddocks, reduced the flood risk to 671 and and provided a dry access way which will be improved over time. Any further removal of material will be treated as theft.

Security, health and safety, and control of stock are not contributing factors as the remaining section of Public Road that you use from the corner of 669 across the ford to the intersection with Miller Road is not, and has never been gated. Likewise the assertion that the proposal reinstates the southern gate fails to acknowledge that this gate was placed contrary to consent and was required to be

removed. There has never been a gate way prior to this.

The public road provides us, as owners and occupiers of 669, with our only road access during times of high river levels across the Waitati ford and a secondary access at other times plus the route between the other 2 properties.

We object strongly to proposal and will be forwarding this objection, your email and attachment plus supporting documentation to both the DCC and ORC.



Ngā Mihi

John Ransley & Carolijn Guytonbeck

669 Waitati Valley Road
Dunedin 9085
Te Waipounamu
Aotearoa New Zealand



Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:06 p.m.
To: Michael Tannock
Subject: FW: re meeting with Mark Spencer

From: Annie Naylor [REDACTED]
Sent: Monday, 27 May 2019 12:14 p.m.
To: Michael.Tannock@dcc.govt.nz
Subject: re meeting with Mark Spencer

Hi Michael

Just talked to Mark and he says that the time is good but he will be in town and would prefer to meet you at your office.

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:07 p.m.
To: Michael Tannock
Subject: FW: RE: to confirm meeting Mark Spencer

From: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Sent: Monday, 27 May 2019 2:20 p.m.
To: [REDACTED]
Subject: RE: to confirm meeting Mark Spencer

Ok, thanks for that, will meet here.
Mike

From: Annie Naylor [REDACTED]
Sent: Monday, 27 May 2019 12:16 p.m.
To: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Subject: to confirm meeting Mark Spencer

Sorry Michael

my laptop is being a bit temperamental at the moment

to confirm

meeting at 1.30pm Thursday 30th at your office

cheers Annie

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:06 p.m.
To: Michael Tannock
Subject: FW: RE: Paper Road Waitati Valley - Mark Spencer

From: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Sent: Monday, 24 December 2018 12:05 p.m.
To: [REDACTED]
Subject: RE: Paper Road Waitati Valley - Mark Spencer

Hi Mark and Annie

My apologies in not getting to this earlier.

It is my understanding from my site visit in November, is that you were wanting to gate both ends of Waitati Valley Road, in line with your property boundary. This is requested as you have recently put a bridge across the Semple Burn, meaning you have better access to this part of your property on the other side of the road. I understand you also have consent to develop for horse activities.

I did look at the property file when I returned from my visit, and discovered that there was previously gate/s, which were required to be removed in 2014 due to issues with animals. I wasn't aware of this during the site visit

In general terms, DCC Transport has no objections to gates being put up in such a location as long as there are no other reasonable objections. To this end, we would want you to visit all property owners who have an interest in this portion of road, to discuss the proposal with them prior to you doing any work and to forward any objections to DCC for consideration.

General terms relating to the proposal are:

The gates are to be labelled with the wording from the Local Government Act regarding the fact that it is a public road. The gates will need to be unlocked at all times and public access can not be restricted.

You will need to ensure that there are no utilities in the road which may be damaged by the work

The gates will not be maintained by the DCC

The gates would be able to remain at the pleasure of the Council

I still need to check with our Animal Control officers as they appear to have been involved earlier.


Regarding maintenance, DCC does not maintain that portion of the road and in general the people who use the road will need to maintain it. We can supply general maintenance standards if you need, but this is without prejudice. The standard of maintenance must not prevent other people from accessing the road.

Suffice to say – if the others that use the road are happy you may get on with putting up the gates, otherwise please could you advise the nature of the objections in the new year.

Kind regards
Michael

Michael Tannock
Network Team Leader, Transport
Dunedin City Council

50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000; Fax: 03 474 3789
Email: michael.tannock@dcc.govt.nz; www.dunedin.govt.nz

 Please consider the environment before printing this e-mail

From: Annie Naylor [REDACTED]
Sent: Tuesday, 18 December 2018 5:22 p.m.
To: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Subject: FW: Paper Road Waitati Valley - Mark Spencer
Importance: High

Hi Michael

Further to my email below, Mark rang you yesterday and as you were unavailable he left a message asking you to contact him, his cellphone number is [REDACTED] and he would appreciate to hear from you soon.

regards Annie

From: Annie Naylor [REDACTED]
Sent: Wednesday, 5 December 2018 4:53 p.m.
To: Michael.Tannock@dcc.govt.nz
Cc: Mark Spencer
Subject: FW: Paper Road Waitati Valley - Mark Spencer

Hi Michael

Mark has asked me to touch base with you about how things stand with the paper road. With the current weather we have a problem with keeping the power to our electric fences and our cows have worked out that the fences are not live and today's rain has just washed out some of our temporary fencing. We feel it would be good if we are able to get our proposed gates in asap. Having said that Mark is out of town until Sunday.

We look forward to your update

regards Annie

From: Annie Naylor [REDACTED]
Sent: Tuesday, 20 November 2018 3:34 p.m.
To: 'Michael.Tannock@dcc.govt.nz'
Cc: Mark Spencer [REDACTED]
Subject: Paper Road Waitati Valley - Mark Spencer

Hi Michael

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:08 p.m.
To: Michael Tannock
Subject: FW: FW: Paper road Waitati Valley

From: Annie Naylor <[REDACTED]>
Sent: Monday, 2 September 2019 2:05 p.m.
To: Michael.Tannock@dcc.govt.nz
Cc: gordon@paine.law.co.nz
Subject: FW: Paper road Waitati Valley

Hi Michael

Just wondering when a decision about the paper road will be made. Since our last communication we have had to put up with John Ransley putting up tape across the road to control the movement of his cattle, these are tapes are difficult to undone, unlike a gate, causing difficult for those using the road getting to their horses which is done on a daily bases. We would like to be able to the gates up as soon as possible as the new growth is starting to come through on our part of the paper road and we would be able to keep it clear and tidy. You did indicate to us that you would have a reply to us a couple of weeks ago.

regards Mark Spencer and Annie Naylor

From: Annie Naylor [REDACTED]
Sent: Monday, 12 August 2019 5:44 p.m.
To: Michael Tannock
Cc: Gordon Paine
Subject: Paper road Waitati Valley

Hi Mike

Further to our last 2 emails of 9/06/19 and 9/07/19 we are still waiting for your reply.

Over the last month we have had issues with horses almost getting out on to the Waitati Valley Road, had the gates been installed this would not have been a problem. Then over the past weekend with the recent rain we have had an old willow drop on to one of our fences cutting the power to the electric fence system. We are in the process of cleaning up this fallen tree and reinstating the power. We ensured that the paper road was cleared enough for those who need to use it yesterday, but will do the full clean up when the river is down. With the electric fence system out of action and no gates on the road we are now unable to keep our stock on the hill and this is now putting pressure on our grazing.

Would you please contact us as soon as possible so we know where we stand on this issue.

Thank you and regards

Mark Spencer and Annie Naylor

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:09 p.m.
To: Michael Tannock
Subject: FW: FW: DCC Contact for paper road

From: Scott Kearney [REDACTED]
Sent: Monday, 11 November 2019 9:56 a.m.
To: Michael.Tannock@dcc.govt.nz
Cc: [REDACTED]
Subject: FW: DCC Contact for paper road

Hi Michael,

I wish to remove my objection to the 2 gates being placed across the paper road on Waitati Valley Rd.

I would also be grateful if you could provide some information around assistance with slip protection and gorse control. There are 2 sections in particular that are prone to slippage and I am wanting to plant this bank out to help shore it up. Is there a nursery that offers discounted shrubs for this purpose or is this something the council can assist with.

Any assistance/ advise would be greatly appreciated.

Regards,

Scott

Scott Kearney
Branch Manager Dunedin



p [REDACTED]
m [REDACTED]
Dunedin Otago 9044

 Please consider the environment before printing this e-mail.

From: Annie Naylor [REDACTED]
Sent: Sunday, 27 October 2019 11:40 AM
To: Scott Kearney [REDACTED]
Subject: DCC Contact for paper road

Hi Scott

this is the email address you need for the DCC Michael.Tannock@dcc.govt.nz

Michael Tannock is the person we have been dealing with and he also is the one who can give you information about how the Council can help you with weeds, gorse, broom etc on your section of the paper road.

I would appreciate if you could either copy me into the email you send or forward me a copy please.

Great catching up with you today and hope you have had a good cup of tea and a restful day after the rugby

cheers Annie

This email and any attachments are confidential and are intended for the addressee(s) only. Unauthorised use of this communication is prohibited. If you have received this communication in error, please notify the sender and remove them from your system. Confidentiality is not waived or lost by reason of the mistaken delivery to you. Before opening or using any attachments, it is your responsibility to check them for viruses and defects. Thank you.

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:08 p.m.
To: Michael Tannock
Subject: FW: Paper road Waitati Valley AGAIN

From: Annie Naylor <[REDACTED]>
Sent: Tuesday, 17 September 2019 1:28 p.m.
To: Michael.Tannock@dcc.govt.nz
Cc: gordon@painelaw.co.nz
Subject: Paper road Waitati Valley AGAIN

Hi Michael

It has been another 2 weeks since I last emailed you, AGAIN we are still waiting for a reply as to a decision being made about the paper road crossing our property.

This may seem unimportant to you but for us it is cause a number of problems, as indicated in previous emails 9 July, 12 August and 7 September, with the running of our property and stock control.

Do we need to take this further with our lawyer, surely someone can make a decision over this relatively minor matter.

On the 14th of August you wrote 'My apologies for the delay in contacting you. I was hoping to have an update on this for you today, however I have not been able to carve out time to get that for you. I will set aside some more time tomorrow to do so.' This was over a month ago.

Please confirm you have received this email and we hope that this will include a final result.

regards Mark Spencer and Annie Naylor

From: Annie Naylor <[REDACTED]>
Sent: Monday, 2 September 2019 2:05 p.m.
To: Michael Tannock

Cc: Gordon Paine
Subject: FW: Paper road Waitati Valley

Hi Michael

Just wondering when a decision about the paper road will be made . Since our last communication we have had to put up with John Ransley putting up tape across the road to control the movement of his cattle, these tapes are difficult to undone, unlike a gate, causing difficult for those using the road getting to their horses which is done on a daily bases. We would like to be able to the gates up as soon as possible as the new growth is starting to come through on our part of the paper road and we would be able to keep it clear and tidy. You did indicate to us that you would have a reply to us a couple of weeks ago.

regards Mark Spencer and Annie Naylor

From: Annie Naylor [REDACTED]
Sent: Monday, 12 August 2019 5:44 p.m.
To: Michael Tannock
Cc: Gordon Paine
Subject: Paper road Waitati Valley

Hi Mike

Further to our last 2 emails of 9/06/19 and 9/07/19 we are still waiting for your reply.

Over the last month we have had issues with horses almost getting out on to the Waitati Valley Road, had the gates been installed this would not have been a problem. Then over the past weekend with the recent rain we have had an old willow drop on to one of our fences cutting the power to the electric fence system. We are in the process of cleaning up this fallen tree and reinstating the power. We ensured that the paper road was cleared enough for those who need to use it yesterday, but will do the full clean up when the river is down. With the electric fence system out of action and no gates on the road we are now unable to keep our stock on the hill and this is now putting pressure on our grazing.

Would you please contact us as soon as possible so we know where we stand on this issue.

Thank you and regards

Mark Spencer and Annie Naylor

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:07 p.m.
To: Michael Tannock
Subject: FW: Paper Road Waitati Valley - Mark Spence

From: Annie Naylor [REDACTED]
Sent: Tuesday, 23 July 2019 4:30 p.m.
To: Michael.Tannock@dcc.govt.nz
Cc: gordon@paineilaw.co.nz
Subject: Paper Road Waitati Valley - Mark Spence

Hi Mike

Just wondering what is happening in reply to our email of 9/07/19 in regards to the paper road at 693 Waitati Valley Road?

regards Mark Spencer and Annie Naylor

[Type text]

Michael Tannock
Network Team Leader, Transport
Dunedin City Council
P O Box 5045, Moray Place, Dunedin 9058

Hi Mike,

Re gates on Old Waitati Valley Road

Further to our meeting on the 30th of May -

We are currently undertaking resource consent for further development to our equestrian centre, this will include a cross country course on the hill block of our property where we have previously had difficulty getting to. We would like gates as stated for extra security and animal and weed control on parts of our land we cannot get to unless we use that particular part of the paper road. All our paddocks on the northern side of the Waitati River are accessed via the paper road in question and stock is moved along this road frequently, along with feeding out by our clients who keep their horses in the paddocks off this road.

Stock control is needed when we graze stock along this section of the road (ie where our land is on both sides of the road). This is part of our management of the road to keep it clear for users, keeping our stock secure and ensuring they do not roam on to neighbouring properties or other public roads and ensure that there is no fire risk from overgrown grass.

The gates in concern will give us the added security and stock control ability. The gate on the northern end in particular will enable us to graze the paper road and allow our stock access to a small paddock on the northern end of our property. A gate at this point will stop cattle being able to wander off our property towards the neighbours, where there are little or no fences and has caused problems in the past, and potentially as far as the highway. From that point of control we think this gate may be closed the majority of the time and the southern gate only when required.

This is a copy of the request we sent to the 3 neighbours who have some shared boundaries along some parts of this paper road.

To Whom It May Concern

RE: Gates across paper road on the Old Waitati Valley Road

Concerning "Paper Roads and Public Access"

- *Our rights and responsibilities entitle us to put gates across this road, where we (the above) are responsible for (and own) both sides of this road.*
- *For stock control, security and health and safety – including maintenance of our portion of the road*

As trustee for the property at 693 Waitati Valley Road, Marrafin Trust :-

[Type text]

We plan to put two gates on the Old Waitati Valley Road. These will not be locked and will still allow public access under the local government act. The gates will be at the northern and southern boundary line where we own both sides of the Old Waitati Valley Road and will be in accordance with local council regulations. This reinstates the southern gate that was there in the past and the northern gate will give fuller security for the property and control of stock.

If you should have any objections to this proposal please reply in writing to [REDACTED] within 7 days as we wish to move on this asap.

Regards Mark Spencer

Replies from the 3 neighbours concerned with our comments on each –

From Peter Finch, 671 Waitati Valley Road [REDACTED]
Hi Spence,

I'm sorry but I can't give you my permission to use our road as outlined in your email.

As you know my elderly Dad George has a number of health issues including heart problems, anxiety, osteoarthritis, sleep apnea and is very sensitive to lights from the highway and noises. His peaceful unobstructed walks up that road are crucial to his well being. Additionally, our two children aged 8 and 12 use the road often, either on long walks up the valley or to the letterbox. Sometimes the children are on bikes and this way is far safer than the other road off the highway.

As we don't see a legitimate reason to be grazing and/or feeding on our road we strongly oppose this. Maybe we could tether our goats to graze the edges once a month or come up with a different plan that we all agree on?

Kind regards, Peter Clinch

This property has its own main access running parallel to the highway. The Finch family have a gate on their property to open before accessing the paper road. We know George uses the road for walking but rarely see the children. Putting unlocked gates will not impeding anyone using the paper road and gates will alert users to the possibility of stock in the area. Also we have had items (horse covers/electric fencing gear) stolen from this area in the past which was reported to the police. The police's comment was that gates may help prevent this in the future. Peter calls the paper road 'our road' which it is not.

From Scott Kearney 673 Waitati Valley Road [REDACTED]
Spence,

I object strongly to your proposal to put gates across Waitati Valley Road as proposed in your email.

I use that section of the road constantly via vehicle or horseback and refuse to be inconvenienced by you putting in gates under the guise of security and health and safety. Nor should any of the neighbours or guests that come to visit them.

I am not negotiable on this.

Regards, Scott

[Type text]

We work at/on our property all the time and have never seen Scott on horseback on that section of the road, although he drives on it very occasionally. Furthermore he has two gates on his section of the paper road which must help with his stock control and security. We do not find these gates an inconvenience when we use this section of road. Scott mostly uses the exit on to the highway at the northern end of the paper road on a very regular (daily) bases as his main egress. We have talked to NZTA about possible removal of the northern gate on to the highway, which they are in approval of. This would make Scott Kearny's access even easier should he so desire.

From John Ransley 669 Waitati Valley Road [REDACTED]

The section of Waitati Valley Road is a Public Road - not a 'paper road'. You already are well aware of this with previous and repeated council orders for you to remove gates in 2013, subsequent orders to remove electric tapes used as gates, remove stock confined to the road over months, cease using the road as a winter feeding platform and fencing the boundaries as required.

The portion of road is not 'yours'. Maintenance issues are clearly dealt with in the original subdivision and purchase documents which you have from 2001 onwards. Maintenance does not include either sustained grazing or your removal of several truckloads of road material to your own property in late 2018. The rock and gravel was placed on the road in agreement with, and shared cost by the land owners and access users at 669, 671 and 673 and the ORC in 2017.

This was a reinstatement of the road after damage caused both by your using it as a feeding platform and subsequent scouring by the 2017 flood event. By raising the road level we have compensated for the raised level in your adjacent paddocks, reduced the flood risk to 671 and and provided a dry access way which will be improved over time. Any further removal of material will be treated as theft.

Security, health and safety, and control of stock are not contributing factors as the remaining section of Public Road that you use from the corner of 669 across the ford to the intersection with Miller Road is not, and has never been gated. Likewise the assertion that the proposal reinstates the southern gate fails to acknowledge that this gate was placed contrary to consent and was required to be removed. There has never been a gate way prior to this.

The public road provides us, as owners and occupiers of 669, with our only road access during times of high river levels across the Waitati ford and a secondary access at other times plus the route between the other 2 properties.

We object strongly to proposal and will be forwarding this objection, your email and attachment plus supporting documentation to both the DCC and ORC.

John Ransley

669 Waitati Valley Road
Dunedin 9085
Te Waipounamu
Aotearoa New Zealand

This contains misleading information and is absolutely ridiculous.

Ransley's reply shows that he does not follow what we want to do.

We do not want to do anything in the Miller Road/Waitati Valley Road area.

Prior to 2013 Ransley wanted a gate at the southern end of the paper road, where we have indicated, he said 'a gate there will be good for security' until this no longer suited him when it was removed, at the time it was not worth any argument; there is no 'agreement' re maintenance of the section the council is not interested in (ie from the ford north to the highway); although after the 2017 flood some idiot arranged truckloads of rocks to be dumped on the paper road making it practically impassable (locally it became known as the river road) this was done at the time

[Type text]

(according to Kearney but organised by Ransley) to supposedly create a turning area to get into 671 but made it impossible for us to use gateways into some of our paddocks. We hear now this was done under some ridiculous/ mischievous/devious guise of flood control, but whoever organised this showed little or no knowledge of how the river and surrounding creeks run leaving us with no option but to clear things up. Both 'actually' (we had to remove boulders to access our gate) and now with you the council.

During times of high river levels (maybe two or three times a year) unlocked gates will not stop the Ransleys from leaving their property if they need to.

To sum up

Gates will not stop anyone legitimately using the road but will in effect make the area more manageable, secure for stock control and safer for users of the paper road. This has to be good in regards to health and safety for all concerned.

This certainly would be more convenient for us for stock control as we will not have to worry about stock wandering into neighbours' properties causing problems or down to the highway while being able to maintain our section of the paper road.

Your email of the 24.12.18 said 'In general terms, DCC Transport has no objections to gates being put up in such a location as long as there are no other reasonable objections.'

We believe these replies from the 3 neighbours do not constitute reasonable objections.

Please see attached map for topographical details of the area.

Regards Mark Spencer and Annie Naylor

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:08 p.m.
To: Michael Tannock
Subject: FW: RE: Waitati Valley Road

From: Annie Naylor [REDACTED]
Sent: Wednesday, 14 August 2019 5:20 p.m.
To: Michael.Tannock@dcc.govt.nz
Cc: gordon@painelaw.co.nz
Subject: RE: Waitati Valley Road

Thank you for getting back to us Michael, we had been in at the Council today which is why we thought we would touch base with you.

We look forward to your update tomorrow

regards Annie

From: Michael Tannock [mailto:Michael.Tannock@dcc.govt.nz]
Sent: Wednesday, 14 August 2019 5:14 p.m.
To: Annie Naylor
Subject: Waitati Valley Road

Hi Mark and Annie

My apologies for the delay in contacting you. I was hoping to have an update on this for you today, however I have not been able to carve out time to get that for you.
I will set aside some more time tomorrow to do so.

Kind regards
Michael

Michael Tannock
NETWORK ASSETS TEAM LEADER
TRANSPORT

P 03 477 4000 | E michael.tannock@dcc.govt.nz
Dunedin City Council, 50 The Octagon, Dunedin
PO Box 5045, Dunedin 9054
New Zealand
www.dunedin.govt.nz

Jenny Lapham

From: Michael Tannock
Sent: Tuesday, 16 February 2021 05:08 p.m.
To: Michael Tannock
Subject: FW: Paper road Waitati Valley

From: Annie Naylor [REDACTED]
Sent: Monday, 2 September 2019 2:05 p.m.
To: Michael.Tannock@dcc.govt.nz
Cc: gordon@painelaw.co.nz
Subject: FW: Paper road Waitati Valley

Hi Michael

Just wondering when a decision about the paper road will be made . Since our last communication we have had to put up with John Ransley putting up tape across the road to control the movement of his cattle, these are tapes are difficult to undone, unlike a gate, causing difficult for those using the road getting to their horses which is done on a daily bases. We would like to be able to the gates up as soon as possible as the new growth is starting to come through on our part of the paper road and we would be able to keep it clear and tidy. You did indicate to us that you would have a reply to us a couple of weeks ago.

regards Mark Spencer and Annie Naylor

From: Annie Naylor [REDACTED]
Sent: Monday, 12 August 2019 5:44 p.m.
To: Michael Tannock
Cc: Gordon Paine
Subject: Paper road Waitati Valley

Hi Mike

Further to our last 2 emails of 9/06/19 and 9/07/19 we are still waiting for your reply.

Over the last month we have had issues with horses almost getting out on to the Waitati Valley Road, had the gates been installed this would not have been a problem. Then over the past weekend with the recent rain we have had an old willow drop on to one of our fences cutting the power to the electric fence system. We are in the process of cleaning up this fallen tree and reinstating the power. We ensured that the paper road was cleared enough for those who need to use it yesterday, but will do the full clean up when the river is down. With the electric fence system out of action and no gates on the road we are now unable to keep our stock on the hill and this is now putting pressure on our grazing.

Would you please contact us as soon as possible so we know where we stand on this issue.

Thank you and regards

Mark Spencer and Annie Naylor

Jenny Lapham

From: John Ransley [REDACTED]
Sent: Wednesday, 16 December 2020 04:37 p.m.
To: Michael Tannock
Subject: Waitati Valley Road - gate

Hi Michael,

Further to our conversation yesterday and your e mail.

The gates on the road have been replaced, closed, signs added and a herd of around 24 cattle confined to the road having been moved from an adjacent paddock - picture attached. There is plenty of grass in adjoining paddocks and absolutely no reason the the cows to be there. Your reply ASAP thanks.



Ngā Mihi

John Ransley

Totally Wired Limited
669 Waitati Valley Road

Jenny Lapham

From: Michael Tannock
Sent: Thursday, 17 December 2020 04:53 p.m.
To: Simon Drew
Cc: Karilyn Canton
Subject: Waitati Valley Road - gate

Hi Simon
I saw you floating around today – were you wanting to catch up on this by any chance?

fyi this was from Mr Ransley of Waitati Valley Road.
Cheers
Mike

From: John Ransley [REDACTED]
Sent: Thursday, 17 December 2020 4:39 p.m.
To: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Subject: Re: Waitati Valley Road - gate

Hi Michael,

Some further information for you relating to the road closure - as you will have seen from the previous DCC file notes (2013-14 John Visser) there is a clear and consistent pattern - the cows are continually and deliberately run where they should not be and the explanations for doing so are deliberately misleading at best.

The report (via OIA) I've attached below from the ORC details this - we (the 3 neighbours) see the present closure as retribution for this and other events.

While the Semple Burn has on the face of it been fenced off, over the winters of both 2019 and 2020 cattle were again directed and held in this section - the bank was briefly planted with flax but this was quickly destroyed. By denying access the owner of 693 is obviously trying to avoid any further scrutiny and is now using the public road as a private feedlot. This area used to be open, attractive and used by many locals for picnics, walking and bike riding.

The 3 adjoining property owners are all in agreement after meeting last night that we want the gates removed. Please call or e mail me if you need any clarification or further information.

Ngā Mihi

John Ransley

Totally Wired Limited
669 Waitati Valley Road
Dunedin 9085
Te Waipounamu
Aotearoa New Zealand



25 February 2021

Enquiries To:
Direct Phone:

Colin Price
474 3628

The Occupier
693 Waitati Valley Road
Waitati
DUNEDIN

Dear Sir/ Madam

GATE/ FENCE ACROSS PAPER ROAD

Following our telephone conversation of earlier today in connection with the above, I can confirm that rather than a fence it will be necessary for a gate to be installed and that you will be required to meet the conditions of the enclosed agreement.

I would be grateful if you would sign and return one copy of this letter and retain the other copy for your records. You will also need to consult with your neighbours to advise them of your intentions.

Should you wish to discuss this matter further, please do not hesitate to contact me at the above number.

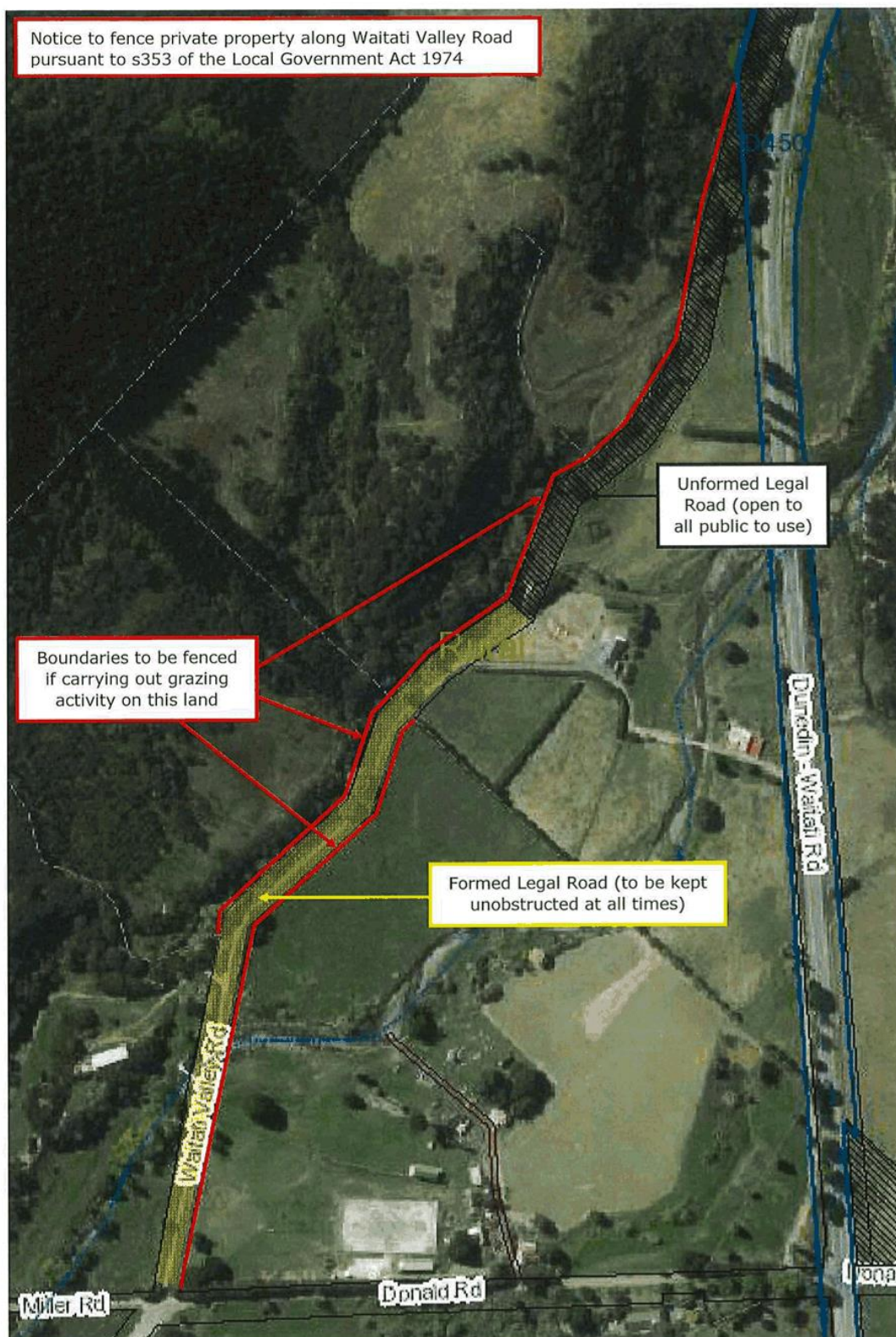
Yours faithfully

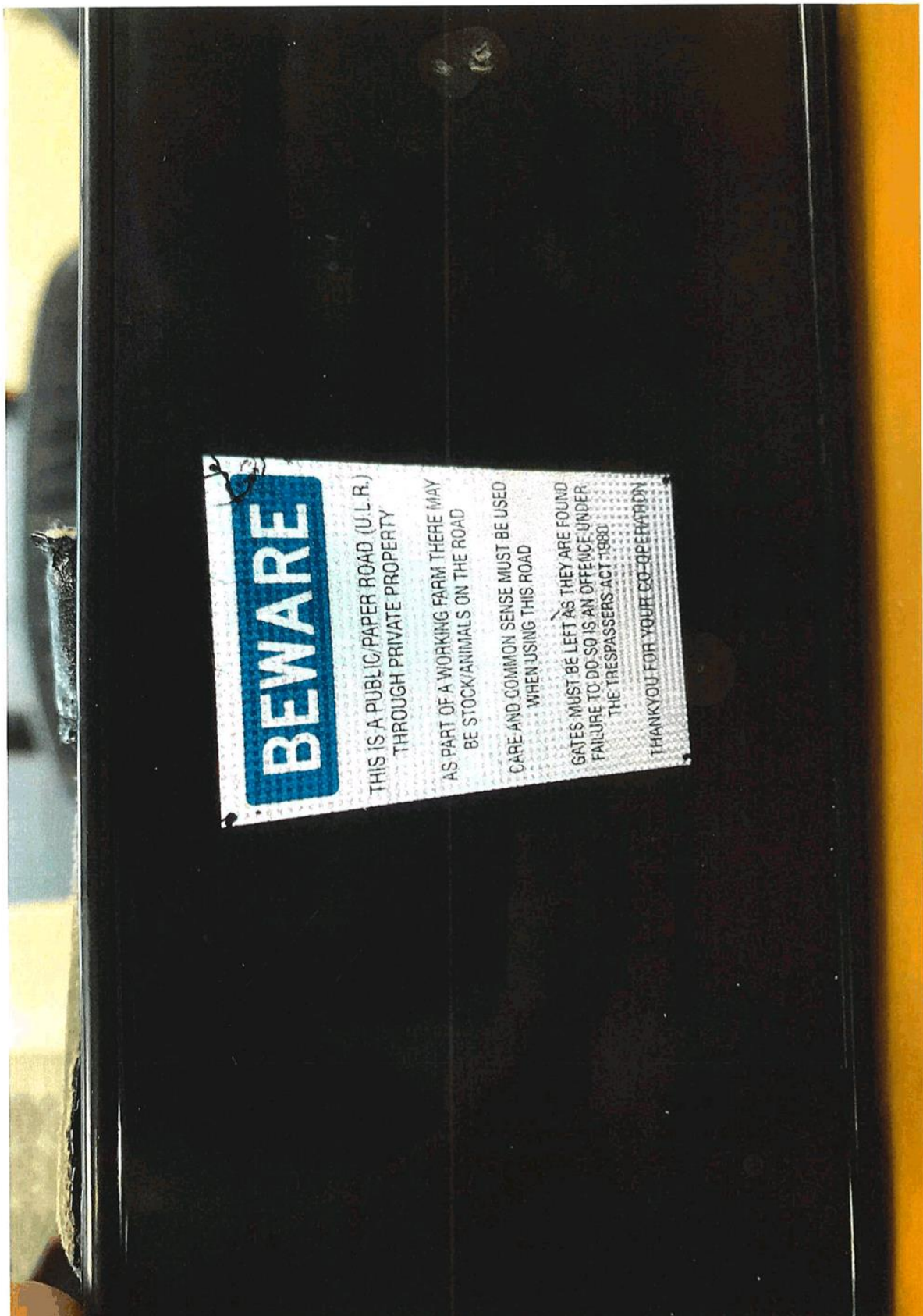
Colin Price
TECHNICAL OFFICER ROADING

Encl

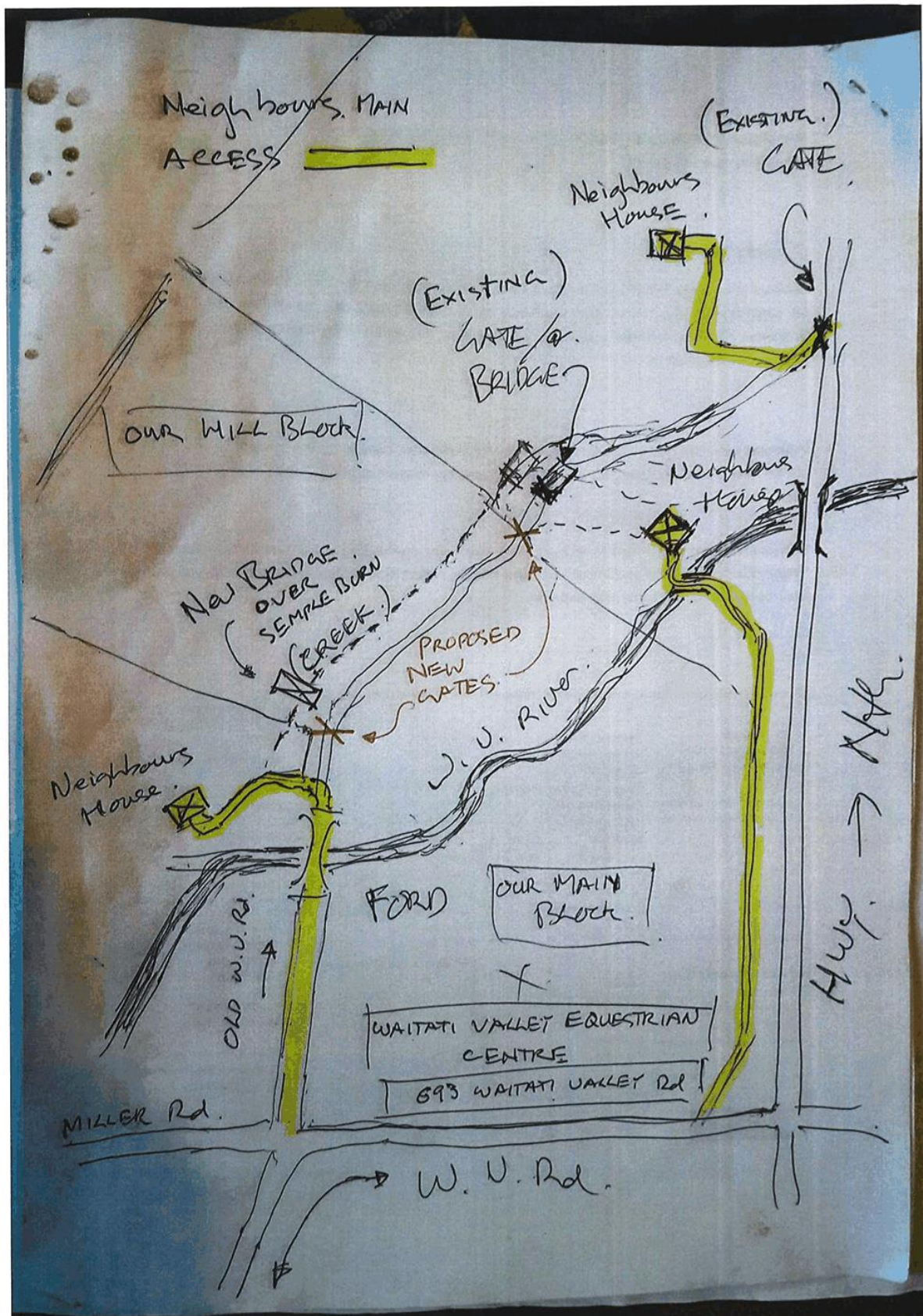
Signed:

Date:











10 March 2021

Gordon Paine
Octagon Chambers
Level 5 Moran Building
8 The Octagon
Dunedin 9016

By email
gordon@painelaw.co.nz

Dear Gordon

REMOVAL OF GATE ON UNFORMED LEGAL ROAD (WAITATI VALLEY ROAD)

We act for Peter Clinch, owner of 671 Waitati Valley Road, Waitati. We understand our client owns the neighbouring property to Mark Spencer (as Trustee of the Marrafin Trust) who owns 693 Waitati Valley Road.

We are advised by our client that Mr Spencer erected two gates late last year which has restricted access for our clients to Waitati Valley Road from their property. In your letter addressed to our client dated 10 December 2020, you wrote that your clients "have, as allowed by law, erected gates on the road..." but you have not provided any guidance of the law to justify your client's position.

It is our client's view that Mr Spencer has illegally erected the gate and has no authority to do so. Unformed legal roads are no different in law from formed public roads, as confirmed by the Guidelines issued by the New Zealand Walking Access Commission. Members of the public therefore have the right to use them on foot, or in vehicles without hindrance from the adjoining landholders or anyone else under the Walking Access Act 2008. Furthermore under the Dunedin City Council Roadway Bylaw 2020 (copy **attached** to this letter) clause 2.2(g) states that "no person shall erect or install or cause to be erected or installed any gates or doors capable of being swung over or across any roads". Our client must therefore respectfully disagree with your claim that your clients have erected the gate as allowed by law. We are also advised that your clients are feeding their stock and animals over the unformed legal road. This has not only resulted in restricted access but also the road is silted as a result of your client's stock and animals. Your client cannot have exclusive right over this unformed legal road.

We also acknowledge from your letter that Mr Spencer is preparing an application to the Environment Court to stop the unformed legal road which bisects their property. Our understanding of the Environment Court process in relation to a road stopping application is that the application would first be made to the Dunedin City Council (DCC). If the decision is not found in the applicant's favour, the applicant then has a right to appeal this decision in the Environment Court.

We recently spoke to the DCC Transport Team who are responsible for road stopping applications. DCC staff members could not find an application from your client in relation to any road stopping on Waitati Valley Road. We are therefore confused as to what the basis of your client's application to the Environment Court would be if there was no application by your client to the DCC to appeal. The DCC could find an application in their records in relation to Waitati Valley Road but it is an appeal to the new DCC 2nd Generation District Plan (2GP).

 **WILKINSON
RODGERS**
LAWYERS

Burns House, Level 1
10 George Street
PO Box 803
Dunedin
New Zealand

P 3 477 9844
F 3 474 0922
E mail@wrlawyers.co.nz
W wrlawyers.co.nz

 **NZ LAW**
An Association
of Independent
Legal Practitioners

2

We request a copy of your client's proposal for this application to ascertain Mr Spencer's basis for his application to the Environment Court. Furthermore, even if your client is preparing an application to the Environment Court this does not give any rights for your client to pre-emptively erect the gate in the hopes that his application to the Environment Court would be successful.

Our client requests the following:

- (a) That Mr Spencer remove the two gates erected on the unformed legal road;
- (b) That Mr Spencer refrain from displaying any unacceptable behaviour towards our client and his family; and
- (c) A copy of Mr Spencer's application to the Environment Court.

Please confirm receipt of this letter and Mr Spencer's response to our client's request above. If we do not receive confirmation that Mr Spencer will remove the two gates that he has erected on the unformed legal road, we will take this to the DCC for them to initiate any action to enforce their bylaws.

We look forward to hearing from you.

Yours faithfully
WILKINSON RODGERS



GEOFF MIRKIN
Partner

Email: geoff.mirkin@wrlawyers.co.nz
Mobile: 027 432 8710

cc: **DCC Transport**
Sandy Graham (DCC CEO)

MB-925848-7-14-1



19 March 2021

BY EMAIL

Vivienne.Harvey@dcc.govt.nz

Chief Executive Officer
Dunedin City Council
PO Box 5045
DUNEDIN 9054

RE: MARRAFIN TRUST (SPENCER) – WAITATI VALLEY ROAD

I have written to you before with respect to this matter. To recap, Mr Spencer sought agreement with the council to enable him to erect two gates at the northern and southern end on an unformed paper road which bisects his property. The gates would not be locked but would have a sign on them requesting that people using the road open and close the gates behind them. The reason for this is obvious, as if his cattle or horses are allowed to freely move down the unformed paper road they will eventually end up on SH1 where the potential for a fatal accident is large. The matter seems to have disappeared into the council's roading and/or infrastructure team with a number of promises to get back to my client over a period of years but none have been fulfilled.

A Mr Clinch, a neighbour, has now engaged a lawyer and we understand that the other potential objector a Mr Ransley may either do the same or attempt to deal with the matter personally.

The council has the power to allow a gate at the northern and southern end of this particular piece of road to be erected with a condition that it not be locked and have suitable signage to request the users of the unformed paper road to close the gates after them. This in my view is far preferable than a fatality due to a vehicle coming around the corner and striking a cattle beast which has strayed onto the road due to somebody leaving gates open or in this particular case somebody physically removing gates. The police are now involved with this matter and I would request a meeting with you, and perhaps your roading team if that is deemed appropriate by you, to try and see whether or not a solution can be reached which will solve the problem and satisfy all parties. If

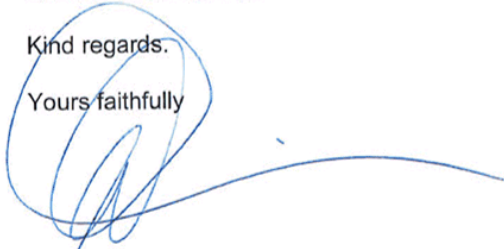
2

not, then it looks there would be an application to stop the road which would enable my client to fence it off completely so as to preclude anyone using the unformed paper road. That is a last resort as Mr Spencer has no difficulty with people using the road providing as a safety measure gates are opened and closed (as is normal in a farming situation).

Accordingly, I look forward to hearing from you with a suitable time to meet to discuss these matters.

Kind regards.

Yours faithfully



GORDON PAINE



14 April 2021

BY EMAIL

Karilyn.Canton@dcc.govt.nz

Dunedin City Council
PO Box 5045
DUNEDIN 9054

Attention: Karilyn Canton

RE: MARRAFIN TRUST (SPENCER/NAYLOR)

Thank you for meeting with the writer and his clients with respect to this matter on 1 April 2021. I have to hand your email of 13 April also.

As discussed at the meeting, my clients wish to formally make application for a grazing permit to graze the berms on the side of the road known as the "**the unformed paper road**". For that purpose, they would erect two gates, one at the north side, and one at the south end where the road bisects the property. At the north end Mr Kearney, a neighbour, has approved the placement of a gate across the road as it protects his situation and prevents stock from entering his property, and it prevents his stock from wandering. I attach herewith a copy of his correspondence confirming that. The only other person to use this part of the road is a Mr Clinch whose elderly father, suffering from dementia, walks on the unformed road on occasions. It is believed however that he has been removing the gate that is situate there and which forms part of the fence line when opened and it is believed he has undertaken some sort of wanton vandalism which has involved and still involves the police.

As stated above, when the gates are open they actually form part of the fence line as it is only having the gates closed that causes the issue that we are concerned with. The amount of time the gates would need to be closed by my clients to enable them to move stock would be seasonal and it is difficult to be precise as it is weather dependent. However as a usage of the gates as a mechanism for controlling stock can be limited to after the spring growth. There needs to be frequent maintenance of the road which is usually one to two hours at least once a week. There is also movement up and down the road from one paddock to another again dependent on growth. During the winter months it is possible to feed stock out on a feed pad for approximately two hours a day and moving them then to their holding and wintering paddocks.

Mr Ransley at the southern end originally advised the council he was opposed to a gate on the southern end of the unformed road. However, we believe that

may now not be the case and that he is happy with a gate. Accompanying this letter are photographs taken recently (6 April) with Mr Ransley moving his stock. It can be seen from the photos he is in fact using the gate and hotwire tapes across the road as part of his stock control arrangements and the gate is closed, and was closed by Mr Ransley.

A grazing licence would enable the berms to be controlled because they are particularly susceptible to fire in summer months should it breakout in that area. Such a blaze would put at risk not only my client's property but also that of Mr Ransley and Mr Clinch and therefore the concept of keeping the vegetation under control is a public safety matter. It is also important to know that if the gates are opened when stock is using the road pursuant to the grazing licence, by a third or unknown party, there is a distinct possibility the stock would end up on SH1 and on the motorway which could be the cause of a horrific if not fatal crash. From an occupational health and safety perspective, it is appropriate that the gate be used as a gate as opposed to part of the fence line when there is grazing on the unformed road, for the better protection (safety and health wise) of all parties who wish to use the unformed road.

However, it does seem that there is now only one objector to the proposal to have gates which would be used as outlined above and based upon the fact that Mr Clinch Senior wishes to walk unimpeded on the road. He can still do that. Whether or not he would wish to walk on the road when stock are grazing is a matter for him but provided he left the gates as he found them there is not issue whatsoever.

Accordingly, we look forward to an independent commissioner hearing this matter and we suggest that this correspondence be on the file for the commissioner so that by way of background the commissioner can consider the position.

This application is made however without prejudice to my client's rights to apply to stop the road completely which although an expensive exercise would resolve the problem for all parties. My clients do not wish to run to this extreme or expense nor put the council to such an expense however it must reserve its position.

Accordingly, we look forward to hearing from you.

Yours faithfully



GORDON PAINE

gordon@painelaw.co.nz

From: annie.naylor [REDACTED]
Sent: Thursday, 8 April 2021 5:12 pm
To: gordon@painelaw.co.nz; Mark Spencer
Subject: Fwd: Waitati Valley Rd

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Scott Kearney [REDACTED]
Date: 8/04/21 16:12 (GMT+12:00)
To: [REDACTED]
Subject: Waitati Valley Rd

Hi Michael,

Following my letter to the council, 11 November 2019, concerning gates across Waitati Valley Road I understand there are still some issues.

I wish to make it clear to you my position on this. The northern gate was always over the road. It was in an inconvenient and ineffectual position at the approach to the small bridge over the creek (Semple Burn).

Mr Spencer (693 Waitati Valley Road, my adjoining neighbour) with my permission and full approval moved this gate approx. 40 metres to the far better position where it is now.

On the boundary of both his (Spencer's) and my property it gives both, security and safety to our stock.

Concerning the 'southern gate' that one doesn't concern me or my property so I have no objection to that gate.

I have been assured by Mr Spenser these gates will not be locked and I will be able to use this portion of the road as usual. Normal rules of the country apply regarding leaving the gates as you find them.

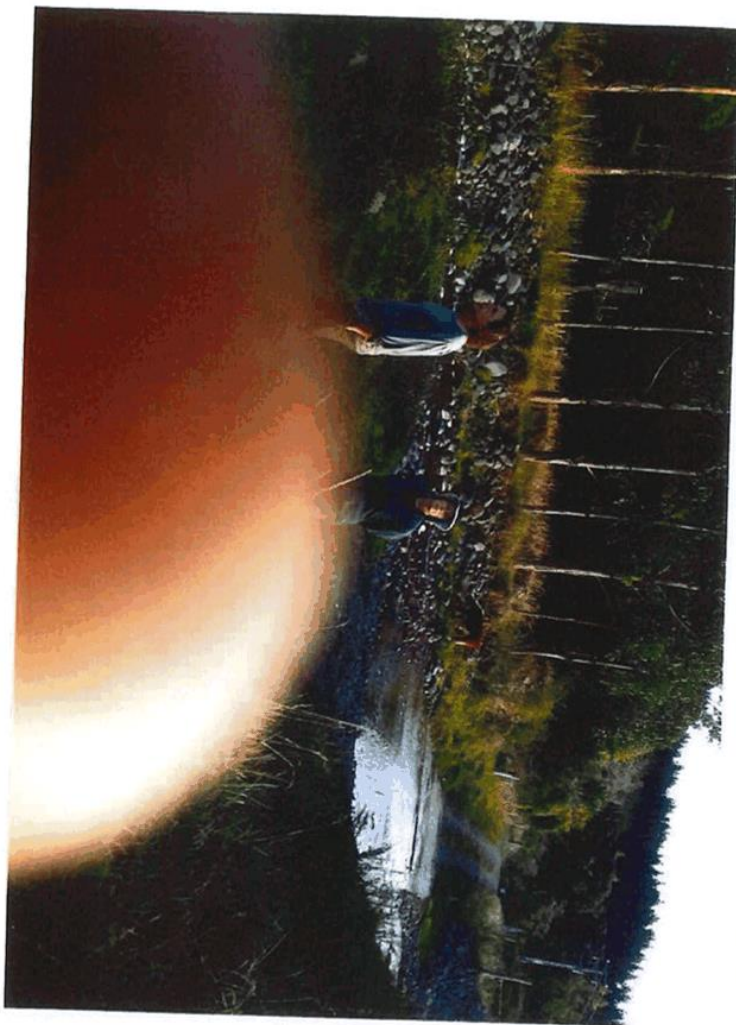
Regards,

Scott Kearney



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Karilyn Canton

From: Michael Tannock
Sent: Thursday, 20 May 2021 10:58 a.m.
To: Karilyn Canton
Subject: FW: 671 Waitati Valley Road
Attachments: IMG_20210518_141755.jpg; IMG_20210518_141826.jpg; IMG_20210518_141613.jpg; 20210511_120756.jpg; 20210513_131736.jpg; 20210514_092603.jpg; 20210514_092625.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Karilyn

I got a report of this last week, drove out in the afternoon but the gates were opened when I visited. I spoke to George Clinch and asked for evidence, and this has been forwarded this week.

Mr Spencer appears to be ignoring the requirement not to close the gate.

Cheers

Mike

From: Peter Clinch [REDACTED]
Sent: Thursday, 20 May 2021 10:35 a.m.
To: Michael Tannock <Michael.Tannock@dcc.govt.nz>; Monica Bae [REDACTED]
Subject: 671 Waitati Valley Road

Hi Michael,

Thanks again for helping us with this.

I have attached some photos as you suggested to Dad last week.

Dad can't walk past the cows as he is fragile, and the road is very narrow in places. The road is getting very soiled by the cows as they have been feed their daily for a couple of weeks now. I have included a photo of the cows in their paddock, and it shows how much the ground has been destroyed.

We believe his intensions were made clear in a previous email from his lawyer, where he plans to take ownership of the road. He also avoids destroying his own land by using our road as his feeding area.

Please let me know if there's anything else that might help.

Kind regards
Peter















Karilyn Canton

From: Karilyn Canton
Sent: Friday, 28 May 2021 03:46 p.m.
To: 'Peter Clinch'; Monica Bae
Cc: Michael Tannock
Subject: RE: 671 Waitati Valley Road

Hi Peter and Monica

Thank you for your e-mail.

Council intends holding a hearing on the Spencers' application for two gates across Waitati Valley Road. Council will be in touch with you shortly to advise the details. The hearing will be before an Independent Commissioner and you will have the right to speak at that hearing.

On regard to runoff into the stream, I note that the Otago Regional Council normally considers such matters.

Thank you for authorising the use of your photos.

Kind regards
Karilyn

Karilyn Canton

**SENIOR IN-HOUSE LEGAL COUNSEL
FINANCE AND COMMERCIAL**

P 03 477 4000 | DD 03 474 3778 | M 021 893 059 | E Karilyn.Canton@dcc.govt.nz
Dunedin City Council, 50 The Octagon, Dunedin
PO Box 5045, Dunedin 9054
New Zealand
www.dunedin.govt.nz



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From: Peter Clinch [REDACTED]
Sent: Wednesday, 26 May 2021 5:08 p.m.
To: Karilyn Canton <Karilyn.Canton@dcc.govt.nz>; Monica Bae <[REDACTED]>
Subject: Re: 671 Waitati Valley Road

Hi Karilyn,

Thank you so much for responding. Monica is right, these things do fuel Mark's hostility, especially to my father but please use them as required.

Yes, the phone puts the correct time stamp on these.

I have attached three more photos from today. One shows the road further along being cut up badly from the tractor bringing the bales along each day.

Of more concern I believe, is the one showing the feeder sitting approx. 2 metres from the Semple Burn creek. All this mess will cause substantial runoff into the creek, especially during a heavy rain. Is this something I should forward to your environmental department?

Please let me know if you need anything else.

Kind regards
Peter

From: Karilyn Canton <Karilyn.Canton@dcc.govt.nz>
Sent: Wednesday, 26 May 2021 3:27 PM
To: Monica Bae <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Subject: RE: 671 Waitati Valley Road

Thanks Monica. Yes, I am aware that there are tensions and would not mention that the photos have come from Peter, but I expect that the Spencers would guess that this is the case.

From: Monica Bae <[REDACTED]>
Sent: Wednesday, 26 May 2021 3:23 p.m.
To: Karilyn Canton <Karilyn.Canton@dcc.govt.nz>; [REDACTED]
Cc: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Subject: RE: 671 Waitati Valley Road



Hi Karilyn,

Sorry to step in here, Peter may also add to this but I did want to mention that the tension between Mr Spencer and Peter's family is quite hostile with Peter's family often subjected to intolerable behaviour by their neighbour. Of course, we acknowledge that the DCC must remain neutral in this issue.

If Peter does consent to you sending the photos to Mr Spencer's lawyer we would appreciate if you do not mention the photo came from Peter in order to avoid any further conflict it may cause.

Peter, please advise DCC accordingly ☺

Kind regards,
Monica

 WILKINSON RODGERS LAWYERS	Monica Soo-Jin Bae SOLICITOR	P 3 477 9844 F 3 474 0922	Level 1, Burns House 10 George St The Octagon PO Box 803 Dunedin 9054	

From 1 July 2018 Wilkinson Rodgers will be asking clients for more information. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT) comes into effect for legal firms on 1 July 2018. This requires us to gather more information from our clients. Find out more about this on our website under AML & CFT by using this [link](#)

From: Karilyn Canton <Karilyn.Canton@dcc.govt.nz>

Sent: Wednesday, 26 May 2021 3:18 PM

To: [REDACTED] Monica Bae <[REDACTED]>

Cc: Michael Tannock <Michael.Tannock@dcc.govt.nz>

Subject: RE: 671 Waitati Valley Road

Hi Peter and Monica

Thank you for your e-mail to Michael Tannock last Thursday. The photos attached to that e-mail are of particular interest to me.

Would you have any objection to me sending the photos to the Spencers' solicitor?

Also, could you please confirm that the photos were taken on the dates shown on the images (ie between 11 May 2021 and 18 May 2021)?

Kind regards
Karilyn

Karilyn Canton

SENIOR IN-HOUSE LEGAL COUNSEL
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From: Michael Tannock <Michael.Tannock@dcc.govt.nz>
Sent: Thursday, 20 May 2021 10:58 a.m.
To: Karilyn Canton <Karilyn.Canton@dcc.govt.nz>
Subject: FW: 671 Waitati Valley Road

Hi Karilyn

I got a report of this last week, drove out in the afternoon but the gates were opened when I visited. I spoke to George Clinch and asked for evidence, and this has been forwarded this week. Mr Spencer appears to be ignoring the requirement not to close the gate.
Cheers

Mike

From: Peter Clinch <[REDACTED]>
Sent: Thursday, 20 May 2021 10:35 a.m.
To: Michael Tannock <Michael.Tannock@dcc.govt.nz>; Monica Bae <[REDACTED]>
Subject: 671 Waitati Valley Road

Hi Michael,

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Dad can't walk past the cows as he is fragile, and the road is very narrow in places. The road is getting very soiled by the cows as they have been feed their daily for a couple of weeks now. I have included a photo of the cows in their paddock, and it shows how much the ground has been destroyed.

We believe his intensions were made clear in a previous email from his lawyer, where he plans to take ownership of the road. He also avoids destroying his own land by using our road as his feeding area.

Please let me know if there's anything else that might help.

Kind regards
Peter

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31 May 2021

Dunedin City Council
PO Box 5045
DUNEDIN 9054

Attention: Wendy Collard

BY EMAIL
Wendy.Collard@dcc.govt.nz

RE: MARRAFIN TRUST (SPENCER/NAYLOR), WAITAKI VALLEY ROAD

Thank you for your advices with respect to a hearing. I confirm I am available on Friday 2 July. I will be wishing to advance submissions for my clients and I anticipate there will be the need for some limited cross-examination of the complainants.

To that end, please forward to me pursuant to the provisions of the Local Government Official Information and Meetings Act 1987 a complete copy of the file which will be made available to the hearings committee including all complaints dated and timed without redaction and full details of all parties who have expressed an interest in this matter.

Accordingly, I look forward to hearing from you.

Yours faithfully


GORDON PAINE

cc: Mark Spencer / Annie Naylor



28 May 2021

BY EMAIL

Karilyn.Canton@dcc.govt.nz

Karilyn Canton
Senior In-House Legal Counsel
Finance & Commercial
Dunedin City Council
PO Box 5045
DUNEDIN 9054

RE: MARRAFIN TRUST (SPENCER/NAYLOR)

Your email of even date refers. I have to say was surprised to receive same bearing in mind that you have been forwarded photographic evidence of Mr Ransley, a neighbour and complainant, utilising the road for feeding and the gates were closed.

What now occurs of course is the road is used for moving stock and the gates form part of the fence line. The stock are not left on the road. I trust you have forwarded a copy of some of the correspondence to Mr Ransley and pursuant to the provisions of the Local Government Official Information Meetings Act I request a copy of that correspondence together with a copy of all or any correspondence the council has with Mr Ransley regarding the road in question. Please expedite at my request so that at any hearing all relevant material can be put forward.

Yours faithfully



GORDON PAINE



Date

«Name»
«Address1»
«Address2»
«Address3»
«CITY» «Postcode»

Dear «Salutation»

Local Government Act 1974 Section 344 – Waitati Valley Road, Waitati

The Dunedin City Council has received an application to erect a swing gate across a legal road being Waitati Valley Road, Waitati (attached for your information). The Hearings Committee will consider the above application at a hearing to held on **Friday, 2 July 2021** in the Edinburgh Room, Municipal Chambers (off the Octagon) commencing at **10.00 am**.

Should you wish to provide an comments in support or opposition to the above mentioned application, would you please provide this in writing by either emailing to wendy.collard@dcc.govt.nz or by post to Dunedin City Council, PO Box 5054, Dunedin 9045. The period to make comment closes at **5.00 pm** on 11 June 2021

Would you also please advise if you will attend the hearing to speak to your comments.

A copy of the agenda including a report from staff will be available via the Dunedin City Council <https://www.dunedin.govt.nz/council/council-meetings/agendas-and-minutes> at least five working days prior to the hearing.

Please note that pending the outcome of this hearing the existing gates are to remain open.

Yours faithfully

Wendy Collard
Governance Support Officer



Cindy Ashley

From: Karilyn Canton
Sent: Thursday, 25 March 2021 9:32 AM
To: gordon@painelaw.co.nz
Cc: Cindy Ashley
Subject: Marrafin Trust (Spencer) - Waitati Valley Road

Dear Mr Paine

The Council's Chief Executive Officer has passed on your letter to me for reply.

Council staff are willing to meet with you and your clients at Council's offices.

I set out below some possible dates and times:

- Noon, 1 April 2021
- 2-3pm 8 April 2021
- Anytime between 10am and 2pm Friday 16 April 2021

Can you please liaise with Cindy Ashley, my PA, to confirm one of the above dates or to arrange another date.

I note that your clients have made a request under the Local Government Official Information and Meetings Act 1987 and the Privacy Act 2020. A response to your request will be sent out this week.

Kind regards
Karilyn

[Karilyn Canton](#)

**SENIOR IN-HOUSE LEGAL COUNSEL
FINANCE AND COMMERCIAL**

P 03 477 4000 | DD 03 474 3778 | M 021 893 059 | E Karilyn.Canton@dcc.govt.nz
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Cindy Ashley

From: Karilyn Canton
Sent: Tuesday, 13 April 2021 2:39 PM
To: gordon@paineilaw.co.nz
Subject: Gates on Waitati Valley Road - Mr Spencer and Ms Naylor

Dear Mr Paine

Thank you for attending Council's offices on 1 April 2021, together with your clients - Mark Spencer and Annie Naylor.

Council has given further consideration to your clients' request for Council's consent to the two gates that have been erected by your clients across Waitati Valley Road.

Council has decided that, to be fair to *all* parties, it intends to have a Hearing before an Independent Commissioner to consider your clients' application. I will be in contact shortly to advise the date for that Hearing.

Pending the outcome of the Hearing, the gates are to remain open at all times and stock are not authorised to be left on Waitati Valley Road for the purpose of grazing or any other purpose. As stressed at our meeting on 1 April, it is your clients' responsibility to ensure that their stock is adequately fenced and does not escape from the land owned by Mr Spencer and Mr Broad (as trustees of the Marrafin Trust). If your clients want to drive stock along the road, your clients must exercise due care towards other road users (including motorists on the Dunedin Northern Motorway).

It is unfortunate that matters have got to the stage where a Hearing is required. Council's preference would be for your clients and their neighbours to reach an agreement regarding the gates. I note your view that this is not possible at this time.

As one final matter, I note that Mr Spencer said at the end of our meeting on 1 April 2021 that "I told you I should have brought my nunchucks". Council staff have chosen to take this as an attempt at humour rather than a thinly veiled threat, but your client should resist such comments in future.

Kind regards
Karilyn

Karilyn Canton
SENIOR IN-HOUSE LEGAL COUNSEL
FINANCE AND COMMERCIAL

P 03 477 4000 | DD 03 474 3778 | M 021 893 059 | E Karilyn.Canton@dcc.govt.nz
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Cindy Ashley

From: Karilyn Canton
Sent: Friday, 28 May 2021 3:57 PM
To: gordon@painelaw.co.nz
Subject: FW: Gates on Waitati Valley Road - Mr Spencer and Ms Naylor

Dear Mr Paine

It has come to Council's attention that your clients have recently closed the gates across Waitati Valley Road and used the legal road for feeding cattle.

I refer to my e-mail below and our meeting prior to that. It has been made plain to you and your clients that, pending the outcome of a hearing, the gates are to remain open at all times and stock are not authorised to be left on Waitati Valley Road for the purpose of grazing or any other purpose.

A hearing has been scheduled to consider your clients' application for gates. You will be receiving details of the hearing shortly.

Pending the hearing, I reiterate that the gates are to remain open at all times and stock are not authorised to be left on Waitati Valley Road for the purpose of grazing or any other purpose. If Council becomes aware that the gates are closed and/or being used for grazing or feeding out then Council will look to enforcement action.

Kind regards
Karilyn

Karilyn Canton
SENIOR IN-HOUSE LEGAL COUNSEL
FINANCE AND COMMERCIAL

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From: Karilyn Canton
Sent: Tuesday, 13 April 2021 2:39 p.m.
To: 'gordon@painelaw.co.nz' <gordon@painelaw.co.nz>
Subject: Gates on Waitati Valley Road - Mr Spencer and Ms Naylor

Dear Mr Paine

Thank you for attending Council's offices on 1 April 2021, together with your clients - Mark Spencer and Annie Naylor.

Council has given further consideration to your clients' request for Council's consent to the two gates that have been erected by your clients across Waitati Valley Road.

Council has decided that, to be fair to *all* parties, it intends to have a Hearing before an Independent Commissioner to consider your clients' application. I will be in contact shortly to advise the date for that Hearing.

Pending the outcome of the Hearing, the gates are to remain open at all times and stock are not authorised to be left on Waitati Valley Road for the purpose of grazing or any other purpose. As stressed at our meeting on 1 April, it is your clients' responsibility to ensure that their stock is adequately fenced and does not escape from the land owned by Mr Spencer and Mr Broad (as trustees of the Marrafin Trust). If your clients want to drive stock along the road, your clients must exercise due care towards other road users (including motorists on the Dunedin Northern Motorway).

It is unfortunate that matters have got to the stage where a Hearing is required. Council's preference would be for your clients and their neighbours to reach an agreement regarding the gates. I note your view that this is not possible at this time.

As one final matter, I note that Mr Spencer said at the end of our meeting on 1 April 2021 that "I told you I should have brought my nunchucks". Council staff have chosen to take this as an attempt at humour rather than a thinly veiled threat, but your client should resist such comments in future.

Kind regards
Karilyn

Karilyn Canton
SENIOR IN-HOUSE LEGAL COUNSEL
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ROADING BYLAW 2020			
 DUNEDIN kaunihera CITY COUNCIL a-rohe o ōtepoti			
Approved by:	Council		
Date approved:	28 July 2020		
Date of effect:	1 August 2020	Reviewed:	28 July 2020
Next review date:	1 August 2030	DOC ID:	

This bylaw is made by the Dunedin City Council pursuant to sections 145 and 146 of the Local Government Act 2002 and section 22AB of the Land Transport Act 1998.

SHORT TITLE

This bylaw is the Roding Bylaw 2020.

COMMENCEMENT

This bylaw comes into force on 1 August 2020.

PURPOSE

This bylaw provides reasonable controls to protect health and safety, to protect the public from nuisance and to regulate and manage roads in Dunedin.

BYLAW

1. Interpretation

1.1. In this bylaw, unless the context otherwise requires definitions are the same as the Land Transport Act 1998 and Land Transport Rules.

2. Things in roads

2.1. No person shall without the consent of the Council or in accordance with the provisions of this Bylaw place or leave anything on any road other than a vehicle lawfully parked.

2.2. Without limiting the generality of 2.1 no person shall:

- a) Leave on any road for any period greater than four hours any vehicle which is not in complete and working order; or
- b) On any road construct or rebuild or repair or make alterations to any vehicle, except for repairs rendered necessary by reason of accident or breakdown; or
- c) Display any article or articles whatsoever outside any shop, shop window, or doorway or in any other place so as to encroach on any road; or
- d) Place, pack or unpack any goods on any road, or
- e) Erect any scaffolding, fence or structure of any kind on or over any road; or
- f) Use any hoist or crane on or above any road; or

- g) Erect or install or cause to be erected or installed any gates or doors capable of being swung over or across any roads; or
- h) Being a person in charge of a vehicle or machine permit any clay, gravel or other material to be carried on to any road; or
- i) Permit or suffer anything to fall from any vehicle into the road or having so fallen to remain in the road.

3. The Council may allow things in roads

- 3.1. The Council may grant to any person on such terms as it thinks fit permission for a specified thing or things to occupy a place or places in a road.
- 3.2. The Council may in granting permission under clause 3.1 impose conditions on the grant of permission in relation to the health, safety and convenience of users of the road and for the protection of the road and for any other relevant matter. The Council may charge such fee as it may fix in respect of the grant of permission for the thing to occupy roads.
- 3.3. If a thing is left in the road in breach of conditions imposed pursuant to clause 3, or the fee payable under the clause has not been paid, the Council may require the thing to be removed.

4. The Council may require things to be removed

- 4.1. Where any thing is on the road contrary to the provisions of clauses 2 or 3, the Council may serve notice on the person who left the thing on the road or any other person who has any interest in or control over the thing requiring that the thing be removed within the period stated in the notice.

5. Activities that damage roads

- 5.1. No person shall undertake any activity that causes or may cause damage to any road.
- 5.2. Without limiting the generality of clause 5.1, no person shall:
 - a) Mix any concrete or other material of any kind on the surface of any road.
 - b) Cause or permit any concrete, mortar, or material of a similar nature to be swept, washed, hosed or sluiced into any road or into any drain connected with any part of the council's drainage or sewerage system.
 - c) Use any vehicle whose wheels or tracks causes or may cause damage to the surface or any part of any road.
 - d) Drag or trail anything whether on a sledge or skids or otherwise so as to damage any road.

6. Costs of repair or reinstatement

- 6.1. Without prejudice to any other remedy it may have where there has been any breach of this Bylaw which results in damage to any road the Council may undertake repairs to the road and recover the costs of and associated with the repair from the person causing the damage or from any person who has committed a breach of the Bylaw in connection with the damage.

7. Cellar doors

- 7.1. The owner and occupiers of any building with cellar doors or windows whether opening or not or any similar structures in any road shall ensure that they are properly maintained and in a safe condition at all times.
- 7.2. All such doors, windows or other structures shall be used at all times in a manner that does not unnecessarily obstruct the use of the road by any persons or endanger any person using the road. The Council may at any time by notice in writing impose restrictions or conditions upon the use of any such door, window or other structure.

8. Fences

- 8.1. No barbed wire may be used in the construction of any fence within one metre of any road except at a height of not less than two metres above ground level or in any case where the Council is satisfied that the fence has been designed and constructed in a way that prevents any likelihood of injury to persons or damage to clothing through accidental contact with the barbed wire. This Clause shall not apply to any area zoned for rural purposes under the Council's District Plan except where the barbed wire is on a fence abutting a public footpath or a recreation reserve.

Explanatory note: footpath has the same meaning as rule 1.6 of the Land Transport (Road User) Rule 2004.

- 8.2. No person shall construct or allow to remain on any property of which they are the owner or occupier:
- a) Any fence which is in breach of clause 8.1; or
 - b) Any fence which by reason of its design or state of repair is or may be a hazard for users of any road.

9. Stock droving

- 9.1. In any part of the city, other than those parts zoned for rural purposes under the Council's District Plan, no animal may be driven in any road, other than in a yoke or harness, unless the consent of the Council has been obtained. Any consent given by the Council may be limited by conditions as to the number of animals that may be permitted on the road and any other conditions reasonably necessary for the protection of the health, safety and convenience of users of the road and for the protection of the road.
- 9.2. In any part of the city zoned for rural purposes, no animal, other than in a yoke or harness, may be on any road except for such periods and under such adequate control as is necessary for the protection of the road and the health, safety and convenience of users of the road.

10. Road numbers

- 10.1. The owners and occupiers of all buildings shall ensure that they are marked with such number as the Council shall direct or approve. The number displayed on the building shall be such as to be clearly legible from the road.
- 10.2. Where any building is not numbered or where the number is not sufficiently legible the Council may require, by notice in writing, that the building be numbered in accordance with this Bylaw within a period of 14 days.

11. Vehicle crossings

- 11.1. No vehicle may be driven or ridden from a road to an adjacent property except by means of a vehicle crossing constructed for that purpose to the satisfaction of the Council.
- 11.2. The owner or occupier of any premises wishing to have a vehicle crossing installed shall apply to the Council. The Council may require such information reasonably necessary for the proper consideration of the application.
- 11.3. The Council may require that it be engaged to carry out the construction of any vehicle crossing or may require that the crossing be constructed by a contractor approved by it.
- 11.4. All of the costs of and associated with the construction of vehicle crossings shall be borne by the person applying for the vehicle crossing. Any crossing constructed shall be the property of the Council which on completion of the crossing shall, without prejudice to its rights to recover against any person for damage to the crossing, assume liability for the maintenance of the crossing. Such maintenance shall exclude any structures supporting the crossing or the adjacent land.
- 11.5. Where a temporary vehicle crossing is required whether in connection with construction, repair or excavation work or otherwise such crossing shall not be constructed, laid in place or used unless and until the consent of the Council has been obtained. The Council may impose such conditions as it thinks fit on the design and use of temporary crossings and in particular having regard to the safety and convenience of users of the crossing and the road and the protection of the road.

12. Opening in roads

- 12.1. No opening may be made in any road whether to construct, repair or remove any service or for any other reason unless and until the consent of the Council has been obtained.
- 12.2. The Council may require that it be engaged to carry out the work or any part of the work involved in the opening of the road and its reinstatement, or that the work be carried out by a contractor approved by it.
- 12.3. All of the costs of and associated with the opening of any road shall be borne by the person applying for the permission to open the road.
- 12.4. The Council may impose such conditions as it thinks fit on the opening of any road and in particular having regard to the safety and convenience of the users of the road and the protection of the road.



Policy

ROAD ENCROACHMENT POLICY

1. That the encroachment fee for the occupation of road reserve for site development be set at 7.5% of the rated unimproved value per m² of the adjacent property only for new occupiers and, where appropriate, the current occupiers be given the opportunity to purchase the road reserve area.
2. That the encroachment fee for occupation of the road reserve by a garage with a footprint of up to 25m² be as determined by the Annual Plan.
3. That the encroachment fee for occupation of road reserve by a garage with a footprint between 25m² and 50m² for new occupiers be set at twice the rate of (2).
4. That the encroachment fee for occupation of road reserve by fuel point be set as determined by the Annual Plan.
5. That the encroachment fee for the occupation of the road reserve for commercial use at the pleasure of the Council be negotiated by the Council's Transportation Operations Manager.
6. That temporary encroachments be approved at the pleasure of Council and charges set as per the Annual Plan.(skips, containers etc.)
7. Encroachment charges will be adjusted annually via the Annual Plan.
8. This policy will be reviewed three years from the date of adoption."

Adopted: 24-26 January 2012

Waitati River ford in normal conditions: January 2014



Waitati River ford in flood November 2018



Ford in Flood unknown date

