

30 May 2022

Manawatu District Council
Private Bag 10001
Feilding 4743
Email: wendy.thompson@mdc.govt.nz

Attention: Wendy Thompson

Manawatu District Council: Stopping of part of Opawe Road, Manawatu

Introduction

The New Zealand Walking Access Commission, Ara Hikoī Aotearoa, (the 'Commission') is the Crown agency responsible for providing leadership on outdoor access issues. Our role is to provide New Zealanders with free, certain, enduring and practical access to the outdoors. We administer a national strategy on outdoor access including tracks and trails. We map outdoor access, provide information to the public, oversee a code of responsible conduct in the outdoors, help resolve access disputes and negotiate new access. An important aspect of our work is protecting existing legal public access – including unformed legal roads. In this work we routinely provide public access assessments to roading authorities who are considering applications or requests for road stoppings.

Proposed Opawe Road Stopping

We confirm receipt of the Manawatu District Council proposal for road stopping part of Opawe Road, dated 29 April 2022. Receiving direct notice of the proposed road stopping is appreciated.

Having assessed the public access interests and implications from the proposed road stopping, the New Zealand Walking Access Commission, Ara Hikoī Aotearoa, strongly objects to the proposed road stopping of part of Opawe Road.

Assessment

The Local Government Act 1974 Schedule 10 specifies the process for road stopping – which includes the following instruction:

The council shall prepare a plan of the road proposed to be stopped, together with an explanation as to why the road is to be stopped and the purpose or purposes to which the stopped road will be put.

It is not clear from the public notice why this particular part of the road is being stopped. The Commission understands that the reason for closing the Road, and providing an alternative route, is to take the legal road access away from the adjacent property owner's domestic buildings. It is clearly indicated that, if stopping is successful, the closed road would be transferred to the adjoining landowner. If the replacement easement access provided like for like access, then the Commission would have no objection to the road stopping. Currently, access to the Ruahine Forest Park in this location can only be legally achieved through the Opawe Road alignment. It is understood that the alignment of the road to be stopped is obstructed by several farm fences.

The main concern for the Commission is that Opawe Road, as a legal public road, provides for enduring public access rights under law. The removal of a section of the road takes away those rights and reduces connectivity to the Ruahine Forest Park. The proposed replacement access by way of a "public access pedestrian way easement" does not provide the same level of enduring public access.

Public access to the Ruahine Forest Park has become more restricted over recent years, so much so, that protecting public access to the Ruahines has become a priority for the Department of Conservation (DOC) and is noted as such in the DOC Wellington Regional Conservation Management Strategy document.

The Proposed Easement

An easement is a legitimate tool for preserving enduring public access. The proposed easement would provide a link between two sections of legal road, but not have the same rights as the road on either side of it. As a replacement form of access, the easement proposed removes access for public, non-pedestrian modes (no horses, mountain bikes or vehicles allowed) that the public have the right to use on the existing legal road parcel. The easement also does not allow dogs to accompany hunters, trampers or walkers on the alignment.

The proposed easement identifies the Manawatu District Council as the Grantee. As access to the Ruahine Forest Park has become such an issue for the public and DOC, it would seem more appropriate to have DOC as the Grantee. This would put the Department in control of the conditions of closure etc., outlined in the easement. Access to the Forest Park seems to be the only reason the road is used, other than for providing private access to the adjoining owner's property.

The Grantee (the Council) can surrender the proposed easement instrument at any time following public notification and a period of consultation. This process does not appear to give the public the same protection as road stopping legislation does under the Local Government Act 1974. A Walkway established under the Walking Access Act may be an alternative that could be considered. These easements are well known and have been successfully adopted throughout the country.

Another concern is that the easement currently provides, in clause 12, conditions of closure that seriously disadvantage public access and advantage the adjoining owner. Permitted closures include closures for an emergency, maintenance or development works. However, the right of way may also be closed "*at the request of the landowner adjoining the Right Of Way*". This effectively means the adjacent landowner could request closure at any time for no particular reason. If the landowner was only able to request closure for the same or similar purposes outlined earlier in the clause, that would be a more reasonable requirement.

Technically, clauses 20,23,24 and 25 all refer to wrong clauses (where additional clauses have been added into the document at some time without checking the cross-referencing in other clauses).

In short, the proposed replacement easement access erodes both the protection of legal public access over time and the modes of access the public can use. The easement document, as proposed, also has a number of deficiencies that would need to be corrected if the road stopping was to go ahead.

Public Notice

The Commission wishes to register concern that the road stopping notice and associated letter from The Property Group:

1. provides an inadequate explanation as to why the road is to be stopped,
2. fails to clearly identify what purpose the proposed section of Opawe Road to be stopped will be put to, and
3. states that the right of way is created when the land is transferred

1. The explanation for why the road is to be stopped is essentially that the public don't use the road and that the adjoining landowner has occupied and fenced in that part of Opawe Road within their property. It would be more appropriate to state that the section of legal road has been occupied and fenced in by the adjoining landowner and, therefore, the road cannot be used by the public.

2. The notice should state the road stopped land is to be used by the adjoining landowner for presumably farm and private access purposes.

3. Clearly the right of way should be created before the land is transferred or at least created at the same time as the road is stopped. Creating the proposed right of way at the time of transfer of the stopped road could result in no road and no right of way. The worst result for the public possible.

Future Commission Involvement

We invite Manawatu District Council to contact the Commission prior to any future road stopping proposals to enable council to effectively manage the risk of road stopping objections being raised through the public notification process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ric Cullinane', with a small dot at the end.

Ric Cullinane
Chief Executive

Released under the Official Information Act