



# Understanding Planning

## Rights of Way

### Important

The Council does not generally have any direct legal control on matters of conflict involving Rights of Way.

Disputes can be dealt with through civil proceedings, however the Council recommends that the first step should be to discuss the issue with the other parties involved and wherever possible resolve the dispute amicably.

The Nelson City Council has prepared this pamphlet to assist people who want to know what their rights and obligations are regarding Rights of Way.

The following notes are paraphrased from the Ninth Schedule of the Property Law Act 1952.

It gives rights that are **implied** in Right of Way easement if no other provisions have been made.

These implied rights **do not** replace any provisions written into the easement of right of way agreement so it is important to check your right of way easement document.

If in doubt check with your solicitor.

### What are my obligations?

The person that has the Right of Way over your land has the right, at all times of the day and night, to come and go with or without vehicles, machinery and tools etc., over and along the land over which the right of way easement is granted.

This right also extends to their friends, workers, agents and tenants (if the house is rented). However parking on the right of way is not permitted.

### What are my rights?

Your rights and the rights of all others who are occupiers of the land over which the easement has been granted are as follows:

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The right to establish a driveway, and to make any necessary repairs, and/or maintenance to the driveway together with the right of access with or without machinery and equipment for such work.

The right to have the land which comprises the right of way to be kept clear at all times of obstructions. Such obstructions include vehicles, deposits of materials, or other obstruction or impediment to the use of the right of way.

The right to a reasonable contribution from other occupiers towards the cost of establishment, maintenance, upkeep and repair of the driveway to an appropriate standard.

The right to recover from other occupiers the cost of repairs to the driveway caused by any wilful or negligent act.

### **Legal action**

If you exercise your right to remove an obstruction on the driveway and in so doing you damage the other owners or occupiers land, then you are obliged to restore the other person's land to its original condition. However this would also be subject to your right to claim contribution for this work.

Under Section 126c of the Property Law Act 1952 you may give notice to the other land occupiers about your intentions.

You must clearly specify the work that you wish to carry out.

You will need to provide an estimate of the cost and, where there are more than 2 occupiers, the proposed cost share.

Your notice may also include information about consequences if they don't comply with the notice.

If the other occupiers dispute what you propose in the notice they can, within 21 days, send you a cross-notice signifying their objections and any counter proposals they may have.

### **Be careful!**

If you are getting to the stage of legal action then you should definitely be taking professional legal advice as it is probable that if things have got to this stage you will be taking the dispute to court.

Our advice is to use legal action only as a last resort.

Always try and resolve issues by goodwill and negotiation first.

Whilst conflicts regarding Rights of Way are generally a civil matter we are here to help and serve our customers the best we can. So if you have any questions regarding issues that do involve us please do not hesitate to give us a call.

The Duty Planning phone number is: (03) 546 0357, Our fax is: (03) 546 0239