

POLICY GUIDELINE

CRITERIA FOR CLOSING SIGNIFICANT ROADS

PURPOSE

The policy responds to a request for guidance on criteria for closing significant roads. It addresses the issues raised by proposed closure of the Crown Range for filming of 'Hard Drive'.

The report endeavours to provide a general guideline for temporary road closures associated with a wide range of events including filming, sports events, community activities, etc.

BACKGROUND

This report has been developed following discussion at the Regulatory Committee meeting of 1 August 2006, the Wanaka Community Board 3 August 2006 and the full Council meeting of 25 August 2006.

The underlying legal philosophy of roads is that they are available, at all times, for the free and unimpeded passage by the public (on foot, horse, bicycle, cart, car and truck).

Any interference with that right requires specific statutory authority. That underlying philosophy is why historically so much court time has been devoted to issues of road closures, parking, speed restrictions, etc.

Decisions on roads which are not supported by specific statutory provisions are subject to legal challenge in a range of forms from judicial review to the Ombudsman. Any decisions need to be based closely on the statutory authority given to the Council and basic tenets of natural justice.

This paper is therefore a guideline as to how the Council will interpret and apply the relevant provisions and should not be seen as separate or additional to that statutory authority.

There are numerous forms of road closure ranging from a few seconds by 'stop go men' to closures that last for several weeks (as the recent closure of Skippers Rd for repair). To be clear, this paper deals only with:

- a) Temporary closure of roads for the benefit of third parties (i.e. not for road maintenance, or activities by other parties such as network operators like power, gas or telecommunications).
- b) Planned closures (as opposed to various emergency situations).
- c) Closures that involve periods of longer than say 10 minutes (the 'stop go man' situation).

Basically this defines the matters at issue as commercial or recreational 'events'. The other examples all have separate rules or guidelines applying to them.

LEGISLATIVE POSITION

The statutory authority for temporary road closures is found in Clause 11 of the 10th Schedule to the Local Government Act 1974 (one of a small number of provisions held over from the old Act).

*"11. **The council may**, subject to such **conditions** as it thinks fit (including the imposition of a **reasonable bond**), and after **consultation with the Police and the***

Ministry of Transport, close any **road or part of a road** to all traffic or any specified type of traffic (including pedestrian traffic)....

(e) For a **period or periods not exceeding in the aggregate 31 days** in any year for any exhibition, fair, show, market, concert, film-making, race or other sporting event, or public function:

*Provided that no road may be closed for any purpose specified in paragraph (e) of this clause if that closure would, in the opinion of the council, be **likely to impede traffic unreasonably.***

The balance of the clauses in the 10th Schedule deal with what happens procedurally after the decision on closure is made (i.e. public notices, obligations of drivers, etc).

The key issue then is how will the Council address each of the criteria in Clause 11?

a) The Council

Clause 12 of the 10th Schedule allows the Mayor or an officer of the Council to grant road closures for events, and the Local Government Act 2002 would also permit this power to be delegated to a committee or officer.

We should therefore define what body is Council in a given situation. This is in effect a delegation and the following has been adopted:

- i. In regard to any road other than an arterial road, where the total length of closure is less than 4 hours, the Chief Executive or any officer authorized by him.
- ii. In regard to an 'arterial road' as defined in the Council's roading hierarchy, the decision should be made by full Council (on the recommendation of the relevant committee and the WCB if time permits). A schedule of arterial roads is attached. Where there are discrepancies between the District Plan and the Roding Database the fact that a road is listed on either should be taken to mean that any application requires full Council approval.
- iii. In regard to other roads in the Wakatipu Basin, the decision will be made by the Utilities Committee.

Given that the primary purpose of roads is to convey traffic, this seems appropriate.

Note: Temporary closures distinguished (which go to the functional committee) are distinguished from permanent stopping which requires formal hearings procedures better undertaken by the Regulatory Committee. The results of the Regulatory Committee deliberations are the subject of a recommendation to full Council.

- iv. In regard to other roads in the Wanaka Ward, the decision will be made by the Wanaka Community Board.

A chart of the different approval processes is attached.

Finally, on this section, I would note that the Council closed state highway for the Warbirds events this year. This was because Transit NZ was not involved until after it was too late to exercise their own road stopping processes. In the unlikely event it happens again, this power should be exercised by full Council using the criteria that Transit NZ would itself otherwise use.

b) May

The use of 'may' implies a discretion. The expectation is that the Council, committees, the WCB and officers will exercise this discretion in accordance with this policy. That specifically requires that those parties have full regard to all of the issues identified in this paper and disregard issues which are not established as relevant to the application.

One aspect of this discretion is the timeliness of applications. In cases of major national and international events first contact with Council should usefully be made six months prior to the event. While this is not always possible, and filming in particular can not generally meet this ambition it is an ideal which lets all aspects be thoroughly planned. From time to time it is also inevitable that events will need to be processed in under seven days where circumstances require it.

To illustrate the potential complexity a flow chart of issues is attached.

c) Conditions

The conditions to be applied will be those considered necessary to ensure compliance with the terms on which the application is granted.

As a minimum the following are likely to be required:

- i. those needed to ensure that the asset (road surface, line marking, signs, lights, verges, swales, etc) are protected or returned in the same state in which they were before the event. This may require an inspection (before and after) by an officer of Council. Where required this will be an additional cost to the applicant. The officer may also be able to advise the applicant on steps that may avoid damage or inconvenience to the public.
- ii. Those needed to ensure that the event is implemented as promised. This is likely to require an events plan and a traffic management plan.
- iii. Those needed to fund risks or liabilities that may attach to the applicant or the Council. Council's insurance brokers may need to be consulted over industry standard levels of insurance.
- iv. Those necessary to maintain communication with interested parties (e.g. land owners, Police, other road users, other event organizers, etc).
- v. Those necessary to advise the applicant of other approval procedures, e.g. resource consents, fire permits, etc.

d) Reasonable Bond

A bond may be in cash or from a financial institution. It provides a quick means for the Council to have remedial work done which otherwise might take considerable time or become a liability for ratepayers.

A bond will almost always be appropriate for significant events with commercial attributes but could be a significant hurdle for small local events organisers. The approving authority needs to exercise discretion in the latter case.

Generally a bond, when taken, should be to a value equivalent to 50% more than the estimated cost of the works. This should ensure that any unexpected additional expenditure is recovered. The unused balance of any bond will be returned to the applicant.

e) **Consultation with the Police and the Ministry of Transport,**

This clause requires that the Council, and not just the applicant, consults these parties. The degree of consultation needs to be determined by the decision maker based on the scale and significance of the application.

f) **Road or part of a road**

The only useful classification of road appears to be between arterial, collector and local roads as provided for in the District Plan and the Council's Roading database. This is a common and well understood distinction within Council, and is easy ascertained.

It has relevance to a number of issues as discussed elsewhere in this policy.

It's worth noting that closure of a portion of a road also requires approval from Council.

g) **Period or periods not exceeding in the aggregate 31 days**

This phrase makes it clear that the decision maker has an obligation to weigh up not just the immediate application but also others that might reasonable be expected to arise during the year. For the purpose of counting we use a calendar year.

It may be necessary to conserve the capacity for events considered of greatest value to the community. It would be sad for example to find that roads could not be closed for the Wanaka A&P Show because some of the adjoining roads had been closed on too many prior occasions.

Some roads are capable of disproportionate use for events like the Wanaka Fest, New Year, Festival of Colour, Easter, etc.

Local knowledge plus judicious use of an events calendar should ensure no one is unexpectedly disadvantaged.

There is a real risk in this case that the Council says 'yes' at an early stage and then, at the last minute, is challenged on total closures for the year by a disgruntled party adversely affected by the closure. It will be almost impossible to salvage the event at that stage.

h) **Likely to impede traffic unreasonably."**

This is a very broad phrase that will require judgment on a case by case basis. However there are a number of pointers which can be drawn:

- i. 'likely to' means more than 'may be'. Council will need to reach a firm view that there is a real possibility that traffic will be impaired. You would expect that this would come either from our understanding of traffic volumes on the roads involved or specific expressions of concern from parties affected. There needs to be some evidence that can be pointed to other than just the opinions of the decision maker or advisers.
- ii. The lack of an available alternative will be prima facie evidence of unreasonableness. This might be rebutted by evidence that there is no traffic during the period of the closure, or that those affected had consented to the closure. Consider for a minute the Gourmet Events Triathlon. The request was to close an arterial road. We have a reasonable appreciation of the number and nature of trips made on that route. It involves both private domestic, commercial delivery and tourism traffic with much of that operating to structured deadlines. There is no

alternative route. There is evidence that other activities will be disrupted (e.g. DOC activities), and the closure is for a prolonged period.

- iii. There may be compensatory aspects that make the effects 'not unreasonable'. Generally, the greater the traffic interruptions, the greater the compensatory advantages required.

Those advantages may take numerous forms. For example: the chance to watch world class sports events (World Tri), world class culture (Festival Of Colour), local participation (competitive development for local sportspersons or kids), permanent infrastructure left behind, etc.

The exchange of money (e.g. some form of rental) will not generally be appropriate. If we had summed up the total cost of disruption to local businesses and individuals of the proposed 'Hard Drive' closure it would have been far more than anything the applicant could have paid.

- iv. If dollars are changing hands, then that should be between the applicant and those adversely affected by the proposal. If that leads to broad general comfort within the community with the closure then that may be grounds for the decision maker to conclude that the interference with traffic is not 'unreasonable'. In that case, the community is entitled to expect that the Council casts the net of those affected sufficiently wide that all reasonable effects are recognised.

- v. In this context those living on the road won't be regarded as deserving greater weight than those travelling along it to and from locations outside the closure. In general this question has to be answered on a case by case basis. Locals living on the road are entitled to assurance that medical help can reach them, and to be provided with a means to meet important pre-arranged commitments. On other occasions, a local fair may warrant some interference with exactly where and when people use their vehicle. The economic disruption to a whole community by interference with programmed public transport may or may not be more important than the benefits of an event.

- vi. Some consideration needs to be given to the nature of the event and what it might become. An event of 100 participants in the first year might become 1,000 in subsequent years creating unforeseen impacts. The risk of the event becoming a 'victim of its own success' needs to be discussed with organisers.

- vii. The time of year, and day of the week, may also be relevant. For example a road closure may be reasonable in quiet periods but inappropriate over New Year. Mid week events may have less impact than weekend functions.

- viii. There may well be issues of economic development raised, i.e. that the coverage of the event will promote the district, or a portion of it, to a wide international audience. This argument needs to be quantified carefully and balanced against the other criteria discussed in this paper. Unlike many other districts, this area has extensive daily media coverage and a diverse range of entities promoting various aspects of living and holidaying here. The implications of any one event needs to be weighed in that wider marketing environment, and against the adverse impacts that might arise.

- ix. More commonly there will be alternative routes available and the question is 'are they reasonable'. A 4 hour closure on Speargrass Flat Rd where the route around involved about a 2 kilometre detour was recently approved. At the other extreme, the 'Hard Drive' alternative was to take the state highway to Cromwell and Queenstown. As a 'rule of thumb' it is suggested that any alternative route which increases the likely total journey time by 1/3rd or more should be considered very warily.

There may also be aggravating factors to be taken into account. For example, the alternative state highway route from Wanaka to Queenstown also involves periodic closure at the Nevis. The decision maker needs to 'cast around' for those aggravating factors in the application before them.

- x. In this policy a distinction is drawn between arterial, collector and local roads. A closure of an arterial road can be expected to interrupt more people than a local road. While the number of people affected will be an important criteria, weight also needs to be given to the impact of the interruption. A brief interruption to someone waiting for an ambulance, or the closure of a local road for a car race outside the home of an invalid, should also be assessed carefully.

FEES

Council's practice has been to recover the costs of processing event applications. A fee of \$500 a half day for closure for use of the road plus a time charging regime for Council to process the application is applicable.

It is necessary to change the fee regime whether it be for filming or any other activity.

COMPLIANCE ISSUES

One of the issues for a decision maker to address is whether the resulting status of the area while closed meets the needs of the applicant. Generally once an area is closed that will be sufficient but that may vary according to the use required. For example, if the road is closed, will any parked cars be removed. This needs to be discussed between the applicant and the Council representatives.

HELPING APPLICANTS

There may be alternative ways to implement an event which the applicant has not thought of. Council should remain willing to seek solutions which allow events to proceed while still preserving the principle set out in this policy.

CONCLUSION

The key issue for temporary closure of roads is what considerations should be in a decision makers mind when considering an application of this kind.

By getting right:

- a) The placement of decision making authority;
- b) The factors that should be taken into account;
- c) The processes for gathering information about the implications in each case;

The Council should be able to avoid the community concern that has arisen in the past.

Appendix 6

Road Hierarchy

1. Arterial Roads

Roads	Start and Finish Names
ARROWTOWN	
Bedford St	Buckingham St to Suffolk/Ford St
Berkshire St	Arrowtown Lake Hayes Rd to Wiltshire St
Buckingham St	Berkshire St to Bedford St
Centennial Avenue	Bedford to 100 kmph sign
Wiltshire St	Berkshire St to Buckingham St
GLENORCHY	
Glenorchy Paradise Rd	50 kmph sign Oban St to end of Rd
Glenorchy Routeburn Rd	Glenorchy Paradise Rd to end of Rd
Queenstown Glenorchy Rd	Fernhill Esplanade Rd to Oban St 50 kmph sign
HAWEA RURAL	
Capell Avenue	Domain Rd to 50 kmph sign Capell Rd
Cemetery Rd	Muir Rd to Gladestone St
Gladstone Rd	Campbell Rd to Cemetery Rd
Luggate Hawea Rd	SH8A- Campbell Rd
Muir Rd	100 kmph sign to Cemetery Rd
HAWEA TOWNSHIP	
Capell Avenue	50 kmph sign to Skipper Crescent
Lakeview Avenue	Skinner Crescent to Muir Rd
Skinner Crescent	Capell Avenue to Lakeview Terrace

Roads	Start and Finish Names
QUEENSTOWN	
Gorge Rd	Stanley St to 100kmph sign Industrial Place
Lake Esplanade Rd	SH6A Fernhill Rd
Fernhill Rd	Lake Esplanade to Glenorchy Rd
Panorama Terrace	Suburb St to Hensman Rd
Stanley St	SH6A to Man St
Suburb St North	SH6A to Panorama Terrace
FRANKTON	
Douglas St	SH6A to Roberston St
McBride St	SH6A to SH6
KELVIN HEIGHTS	
Peninsula Rd	SH6 to Grove Rd
WAKATIPU RURAL	
Arrowtown Junction Rd	State Highway 6 to 50kmph sign Arrowtown
Arthurs Point Rd	George Rd to 100 kmph sign Littles Rd
Coronet Peak Rd	Malaghan Rd to Skippers Rd
Lake Hayes Arrowtown Rd	SH6 to Arrowtown
Malaghans Rd	Coronet Peak Rd to Lake Hayes Arrowtown Rd
WANAKA RURAL	
Crown Range	Revoked SH89 SH6 to SH89 Ardmore St
WANAKA	
Anderson Rd	SH89 to Aubrey Rd
Ardmore St	Brownston St to Sargood Dr
Beacon Point Rd	Lakeside Rd to Waimea Place
Lakeside Rd	Ardmore St to Beacon Point Rd
McDougall St	Golf Course Rd to Ardmore St

Appendix Two

TEMPORARY ROAD CLOSURES

Arterial Road

[e.g. HardDrive, Gourmet Triathlon]

Resolution of full Council

Other than arterial road
In Wakatipu Basin

Utilities Committee

Under 4 hours

CEO or delegate

Other than arterial road
Within Wanaka Ward

Wanaka Community Board

PERMANENT ROAD CLOSURES

Public Works Act Road Exchange

[e.g. Lucas Place or Grant Road realignment]

Full Council

Permanent Road Stopping

[e.g. stopping unformed roads]

Regulatory Committee

Environment Court
[If contested]

SCHEDULE

LIST OF ARTERIAL ROADS FROM RAMM DATABASE

ANDERSON ROAD
ARDMORE STREET
ARROWTOWN-LAKE HAYES ROAD
ARTHURS POINT ROAD
BEACON POINT ROAD
BEDFORD ST
BERKSHIRE ST
BUCKINGHAM STREET
CAPELL AVENUE
CARDRONA VALLEY ROAD
CEMETERY ROAD
CENTENNIAL AVE
CORONET PEAK ROAD
CROWN RANGE ROAD
FERNHILL RD
GLADSTONE ROAD
GLENORCHY PARADISE ROAD
GLENORCHY-QUEENSTOWN ROAD
GORGE RD
KANE ROAD
LAKE ESPLANADE
LAKESIDE ROAD
LAKEVIEW TERRACE
MALAGHANS ROAD
MCBRIDE ST
MCDOUGALL STREET
MUIR ROAD
PANORAMA TCE
PENINSULA RD
SHOTOVER STREET
SKINNER CRESCENT
STANLEY ST
SUBURB STREET
WILTSHIRE ST

Note: there are minor discrepancies between the District plan and RAMM list due to the difficulty of updating the district plan. The most obvious action is to compile a consolidation of both lists as the roads on which a closure proposal needs full council approval.