

What constitutes a road?

While Waka Kotahi is correct, that whether an area is a road is always case by case basis, there are some general principles that can assist us.

The starting point is the definition of “road” in the Land Transport Act 1998, which reads:

Road includes –

- a) Street; and
- b) A motorway; and
- c) A beach; and
- d) A place to which the public have access, whether as a right or not; and
- e) Or bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in paragraph (d); and
- f) All sites in which vehicles may be weighed for the purposes of this Act or any other enactment.

The applicable definition of “road” in the scenario of an industrial yard with associated truck activity is (d) *A place to which the public have access, whether as a right or not.*

The Court has held (d) to mean the area the public has access to, and which it can enter continually or from time to time without asking permission to do so. Mere capability to access an area is not enough to make it a road. The word *public* itself means the general public and not just a section of it. ¹

Applying this to the example discussed, means an industrial yard with associated truck activity would not normally be a road unless there was some reason the general public was expected to access the yard without asking permission to do so. This would be things such as a storefront or office space open to the general public. This would be the case whether the gates were open or not.

What else has been considered a road

The area of concrete between the road and a residential driveway. ²

A farm paddock being used as a car park for an agricultural show. ³

A managed car park with a barrier gate and security guards. ⁴

What has not been considered a road

A shared or separate residential driveway. ⁵

A dirt track that is not used or cycle track in a park. ⁶

What underpins the Court’s decision making in determining what is a road is the principle of public safety. In this sense, “public” and “access” should be given their plain and ordinary meanings with an eye to the purpose of the Land Transport Act⁷. Further, if the area is a workplace that the public can access, duties will be owed to the worker and to the public to ensure their health and safety under the Health and Safety at Work Act 2015. This would include ensuring workers operating machinery, vehicles and equipment are suitably qualified and competent to do so; that duty applies regardless of whether the work is being undertaken on a road or not.

This note was prepared by Olivia Lund and Hagen Neumegan of Duncan Cotterill.

¹ *McKimmie v Thomson* [1962] NZLR 963, at p 966,

² *Police v Te Riini* DC Whangarei CRI-2009-088-000955, 24 July 2009

³ *Cave v Police* HC Christchurch CRI-2004-409-000024, 4 August 2004

⁴ *Bignell v Police* [2023] NZHC 128.

⁵ *McGuire v Police* [2019] NZDC 7748; and *Puna v Police* [2016] NZHC 1863

⁶ *Police v Peters* DC Tauranga CRI-2009-070-000917, 7 April 200 and *McBreen v MOT* [1985] 2 NZLR 495; (1985) 1 CRNZ 678 (CA).

⁷ *McBreen v MOT* [1985] 2 NZLR 495; (1985) 1 CRNZ 678 (CA).