

Meanings of “footpath” and “road margin” in Land Transport (Road User) Rule 2004

The RURs provide the following definitions

1.6 Interpretation:

footpath means a path or way principally designed for, and used by, pedestrians; and includes a footbridge

road margin includes any uncultivated margin of a road adjacent to but not forming part of either the roadway or the footpath (if any)

The definition of “footpath” encompasses the road space that is principally designed for and used by pedestrians. There is nothing in any of the rules that reference footpath that limits this to paved areas of the pedestrian space.

The definition of “road margin” excludes any part of the footpath. The term is only used in RUR 6.2, 11.14 and 11.15. Both 11.14 and 11.15 refer to riders of horses. 11.14 requires horse riders to “when a reasonably adequate road margin is available, keep the animal on the road margin as far as practicable”, but prohibits riding “along a footpath, or on any lawn, garden, or other cultivation adjacent to or forming part of a road”. These words suggest that road margins do not exist on all roads. It appears that the term “road margin” only refers to areas set aside and formed for parking or stopping off the roadway

References to “footpath” and “road margin” in other legislation

Both terms appear with the same definitions in related legislation: the Land Transport (Offences and Penalties) Regulations 1999 (in a schedule of penalties for breaching rules in the RUR, and the Traffic Regulations 1976 (largely revoked and Replaced by the RUR).

There are no references to “road margin” in any other legislation.

The only other relevant references to “footpath” in New Zealand legislation are in the Local Government Act 1974 and the Government Rounding Powers Act 1989. In each case the relevant body (Council, Minister or Agency) is given the power “to determine what part of a road shall be a carriageway, and what part a **footpath** or cycle track only”.

The Local government Act 1974 includes this definition (s315(1)):

“footpath means so much of any road as is laid out or constructed by authority of the council primarily for pedestrians; and includes the edging, kerbing, and channelling thereof”

For completeness, the term “berm” does not appear in any relevant legislation and the term “verge” appears once in the Government Rounding Powers Act 1989, without clarification.

Conclusion

For urban and suburban streets with a formed kerb, the correct interpretation of “footpath” includes the entire space separated from the roadway (or road margin if one is present) by a kerb. AT can, and should, enforce 6.14 against cars parked on any part of this footpath including the unpaved areas, paved areas, vehicle crossings and even the kerbstones.

Some misunderstanding has arisen that "footpath" is limited to the paved portion of the footpath.

In Auckland there are examples of stretches of road that do not have a paved path on both sides, yet the region on both sides delineated from the roadway by the kerb are still “*primarily for pedestrians*”.

There are also examples of footpaths that were once fully paved, but have been upgraded to include grass verges. Certainly no-one expected that this upgrade turned these grass verges into parking spaces. The verges remain “*primarily for pedestrians*”, and remain a part of the “footpath”.

The kerb has always been the important delineation between the footpath and the roadway in New Zealand cities. Unlike in rural areas, cities require this delineation for protection of both the more expensive infrastructure, and to protect the people walking and using the footpath. Children play on verges. Barefoot children prefer to use the verges as their path than to use the paved footpath, and they climb the trees. Passengers from vehicles parked beside the kerb cross the verge on their path to the paved part of the footpath, when they get out of the car. The grass verges are designed, principally, for pedestrians.

Parking vehicles on grass verges in this more expensive, urban built environment is causing substantial damage. The kerbstones are being pushed down, requiring repair. The grass has been turned to ruts and mud. The soil has been squashed so it can no longer accept heavy rain, leading to flooding events. Services under the soil are being damaged. Sometimes this is apparent suddenly; often it is apparent gradually, but it happens every time a car is parked on the grass. The evidence throughout the city is strong. We already know that soil is not up to the task of supporting motor vehicles. Any vehicle parked there is doing damage.

Where there is no kerb, a grassy strip could be interpreted as a "road margin". These undelineated strips generally occur in rural areas and do not have expensive buried infrastructure, kerbs, nor many vulnerable road users.