

# Opening Spiers Road

In the 1840s the fledgling Dunedin's main connection north was the Old Mountain Track over the open tops to near Waikouaiti. Low level routes were then too rugged and bush-clad. Spiers Road was the southern connection down from Flagstaff Hill to Halfway Bush and Dunedin.

Prior to the late 1970s walkers had no problems gaining Flagstaff Hill via Spiers Road or nearby Rudds Road. In 1979 physical assaults were reported. I unsuccessfully tried to resolve the access issue while a FMC representative on the Otago Walkway Committee. With continuing confrontations usage of these roads stopped.



In 1998 the Otago Tramping and Mountaineering Club formed the Ben Rudd's Management Trust to administer their 40 hectare property on the western side of Flagstaff Hill. My youngest brother Peter and I became trustees. Ben Rudd was a fiery little hermit Club members befriended in the Club's formative year of 1923. Ben lived there from 1921 until his death in 1930, aged 70.

Spiers Road was a major legal access to the Ben Rudd property which was almost landlocked by scenic reserve and water reserve, both of which were administered by the Dunedin City Council. We had experienced big problems with the DCC who appeared to resent the OTMC having land in the middle of ‘their empire’.

With the invaluable experiences gained by being involved with public road issues on Otago Peninsula, I set about re-establishing foot access along Spiers Road in late 1998. Having the support of the Ben Rudd’s Management Trust and the OTMC’s lawyer, I researched the 20 metre wide road line which bisected Michael John Childs farm. The road also provided access to Ben Rudd’s original stone-walled property Woodside (1884-1921). On the other side from the Rudd property the road also fronted Dunedin’s first groomed ski slope cleared by enthusiasts in the mid-1930s.

In February 1999, armed with detailed survey plans depicting surveyed ground features (known as survey ‘monuments’), I headed up Spiers Road from Halfway Bush accompanied by ‘An Other’. On exiting a broad expanse of gorse, a quad bike raced down the hill to confront us. We stood our ground



MrChilds having a bad day. KDM's camera



in the centre of the grassed public road and calmly rebuffed Childs verbal onslaught. Politely referring to him as Mr Childs helped me remain calm. I informed him of the legal position and our intention to re-open Spiers Road to foot access and asked Mr Childs how we could work in with him. When his nose was actually touching mine, I quietly informed him that he was risking his name being in the newspapers on an assault charge. He backed off. 'An Other', a psychiatric hospital worker, surprised me by later saying it was the bravest thing he had ever seen. Childs was on the very edge of control. We calmly retreated leaving a stunned Childs standing motionless by his vehicle.

The next stage was a psychological 'softening up' campaign. The fortified locked metal gate across the public road had a 'no trespass' sign, three outrigger strands of barbed wire and clumps of barbed wire on the gate posts. I removed a 'clump' and a small section of barbed wire. This was replaced with smooth wire. Each time barbed wire was reinstated, a greater amount of this wire was removed. Childs apparently got the message. Round one to us. The top of the gatepost was then painted white.

With a small band of helpers we set about hand-cutting a three metre wide track through several hundred metres of old gorse along historic wagon ruts, but hidden from sight from the outside. We observed Childs driving around trying to catch us. On one occasion we hid in a gorse bush with a cell phone ready to call for help.

Then we made the veneer of gorse vanish and lo and behold several hundred metres of completed track appeared. I allowed Childs to recognise me. He hurriedly turned his vehicle around and crashed it off into the scrub.





With help from others, and especially my brother Peter, a process of digging in heavy white marker bollards began. Anything smaller could have been easily pulled out.





After a scary near-assault encounter with one of Child's associates I rang the associate that evening. Half of hour of shouting evolved into a similar period of listening leading to half an hour of almost chatting like buddies. It transpired that this man was scared of Childs and therefore toed his line.

A couple of days later a police woman approached me at home. I think the 'associate' was worried about my safety regards Childs. I pointed out that the public had legal rights of unhindered passage on this public road, including the removal of obstructions, built or vegetation. I suggested that she speak to Childs as I had been warned that he had an alleged reputation for assault. There were no further approaches to me from the Police. It was encouraging to see that the police appeared to have learned about public rights after encounters with the Otago Peninsula Walkers. Unlike the Peninsula, there was no Police harassment.

The next stage was to be seen openly escorting a number of friends down the centre of Spiers Road from the Flagstaff Scenic Reserve. There were no 'encounters' despite being clearly visible from Mr Childs' cluster of home huts.

Stage four involved building a substantial stile at the locked gate. Subsequently this has been left undisturbed.



Peter inspecting the boundary wall of Ben Rudd's Willowbank property.  
This is along part of the eastern boundary of Spiers Road. KDM

However while cutting near the Flagstaff Scenic Reserve boundary we had to hide as a group of Childs' mates tried to find us. Eventually 'the boys' gave up. Two of us then came down the road and painted every rock and road-facing fence-post white.



Trucks were used to dump demolition materials across the road. A short call to the contractor supplying the material and a lawyer's letter to Mr Childs put a stop to that. Childs' resistance to public foot access on an important historic road was broken.

Another stile, signs and markers joined the walkway near the summit of Flagstaff without further problems. To my surprise one of Childs' neighbours later told me that the Masons were most welcome on all the surrounding farms, anytime.

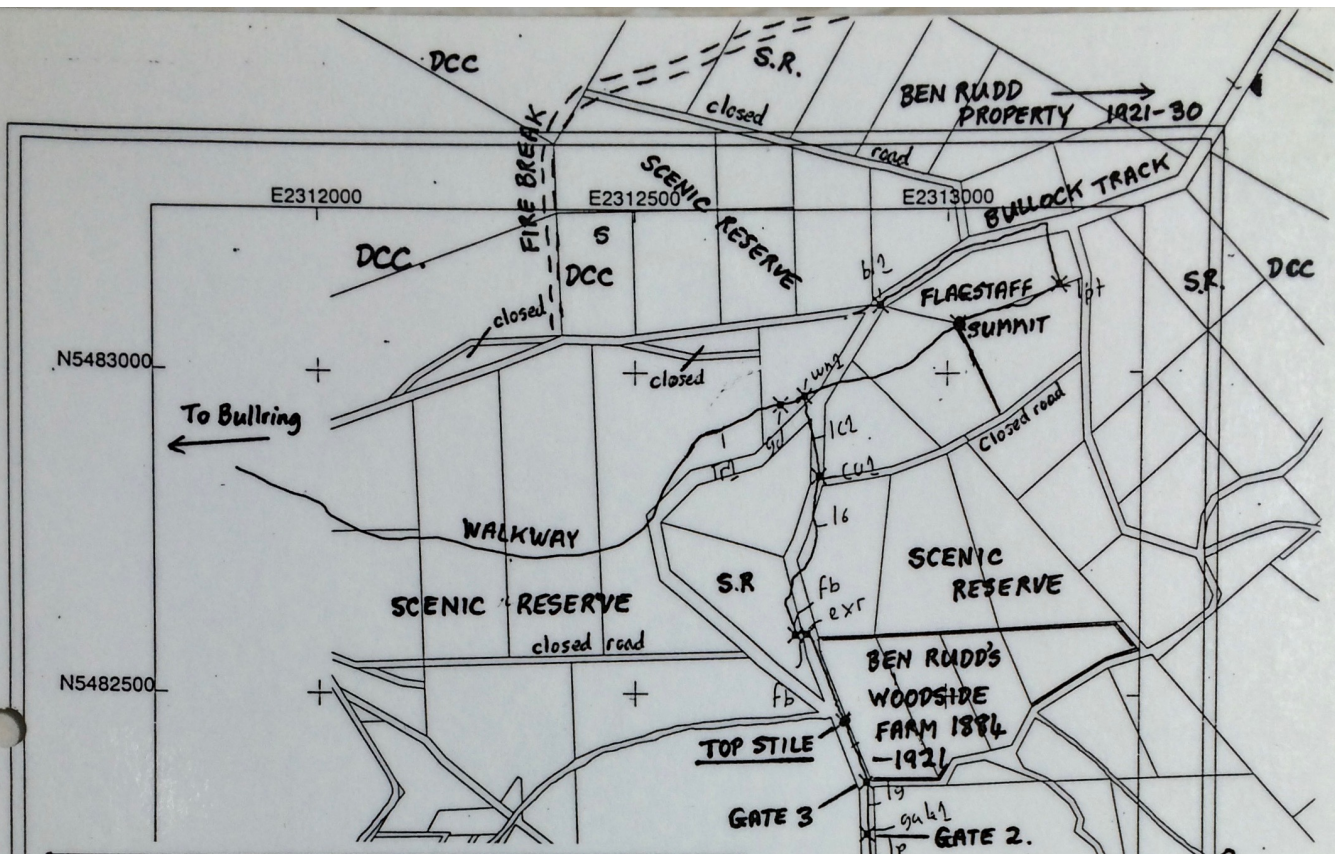


View down the completed track from the Flagstaff Scenic Reserve *KDM*



Bernie Childs, brother of Michael John Childs, I found to be a pleasant, helpful person. The OTMC 50<sup>th</sup> anniversary plane-table on Flagstaff's summit has endured well thanks to his volunteered skills. *KDM*





**SPIERS ROAD & BULLOCK TRACK**

The Ben Rudd's Management Trust began re-establishing foot access along this old (late 1840's) 20m wide formed legal road to the Ben Rudd Property in February 1999.

This map is an overlay of a GPS survey onto a LINZ data base. This was to confirm that the reopened track was on the legal line through the farm-land section. Subsequently minor adjustments were made to match what's called "monumental" evidence on the ground.

Up to the top of the old Woodside Farm the track is well marked and having finishing touches. Through the scenic reserve the route to the walkway is temporarily marked and in part uses the old 1950's firebreak.

So far \$800 has been gifted or raised to research and complete 2/3 of the project.

**DONATIONS TO COMPLETE THIS VERY HISTORIC ROUTE TO FLAGSTAFF AND THE BEN RUDD PROPERTY CAN BE SENT TO THE BEN RUDD'S MANAGEMENT TRUST, P.O.BOX 1440, DUNEDIN.**

New Zealand Map Grid  
New Zealand  
New Zealand 1949

Scale 1:10000

0 0.300 1km

Kilometers

06/10/99

12/07/1999

Pathfinder Office™

Trimble

Data base 09/02/99. K.D.M. 06/10/99.



## Moore v MacMillan

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Supreme Court Gisborne  
5, 6, 7 July 1976; 16 March 1977  
Chilwell J

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*Trespass to land – Right to relief – Necessity for and sufficiency of possession – Stockyards erected in error partly on legal road – Removal of part on legal road did not entitle plaintiff owner to bring an action for trespass.*

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*Practice – Appeals to the Supreme Court – No notes of evidence – Court decides on evidence before it and not merely whether magistrate's decision was wrong.*

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The respondent as plaintiff had successfully sued the appellant, defendant, in the Magistrate's Court for damages for trespass. The defendant's predecessor had erected stockyards adjoining a formed road which were used by him and the plaintiff's predecessor in title. The defendant purchased the farm in 1969 and part of the northern frontage was bounded by the formed road.

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When the plaintiff purchased his farm there was a clause whereby the plaintiff as purchaser agreed that the defendant should use the stockyards as long as he should own the adjoining property. The defendant used the yards about 20 times per year and the plaintiff about 10 times per year. In 1973 the defendant told the plaintiff that part of the stockyards was on the legal road

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which lay to the south of the formed road. In October 1973 the plaintiff wrote to the Cook County Council stating that the stockyards were on the legal road and that the formed road was on his property and requested the council to take steps whereby the formed road became the legal road and the legal road became part of his property. The *Gazette* notice giving effect to this request was published on 29 April 1976. On 8 February 1974 the defendant by a letter informed the council that the stockyards were partly on the legal road. The county clerk on receipt of the letter orally stated that the matter of the stockyards should be resolved between the parties and that the county would not object if the yards were removed from the legal

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road. On 15 February 1974 the defendant removed that part of the stockyards situate on the legal road being very careful to leave the part on the plaintiff's land standing. The notes of evidence were unavailable and the parties were unable to agree on the facts.

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50 **Held**, allowing the appeal:

1 The notes of evidence being unavailable the ordinary rules as to a rehearing did not apply and the court had to decide the matter on the evidence before it and had not to inquire merely whether the magistrate's decision was wrong (see p 82 line 54).



*Larsen v Aubrey* [1933] NZLR 755, applied.

2 In order to maintain an action for trespass the plaintiff must show apart from any question of title that he is in exclusive possession of the land upon which the trespass took place (see p 89 line 8).

*Waugh v Sheehy* (1888) 7 NZLR 81, 83, applied. 5

3 A person who has no more than a personal licence (albeit it is an exclusive licence) to enter upon land and to enjoy certain privileges thereon cannot maintain an action for trespass (see p 89 line 18).

*Hill v Tupper* (1863) 2 H & C 121; 159 ER 51, applied.

4 The legal road was vested in the county council and subject to the exercise of the powers conferred upon it by s 191A (5) of the Counties Act 1956 the public has the absolute right at common law to pass and repass over the highway without hindrance (see p 90 line 25). 10

*Re Cargill* (1889) 7 NZLR 481 and *Iveagh v Martin* [1961] 1 QB 232, 273 [1960] 2 All ER 668, 683-684, referred to. 15

5 By virtue of the provisions of s 172 (2) of the Land Act 1948 it is not possible for any person to acquire any right whatsoever in a road which in any way derogates from the title of the Crown or the local authority thereto, *as the case may be* (see p 91 line 17).

6 Neither party had title to the road; that title was in the county council which was entitled to possession of the road see p 93 line 13). 20

*Jones v Chapman* (1849) 2 Exch 803, 821; 154 ER 717, 724, and *Morrison v Riddler* (1905) 25 NZLR 296, 298, applied.

#### Other cases mentioned in judgment 25

*Hansard v Tame* [1957] NZLR 542.

*Moreland Timber Co Pty Ltd v Reid* [1946] VLR 237.

*Orbell v O'Connell* (1910) 13 GLR 73.

*Perry v Clissold* [1907] AC 73. 30

#### Note 30

Refer 15 Abridgement 545; 12 Abridgement 180.

#### Appeal 35

This was an appeal from the decision of the Magistrate's Court.

*Chrisp* for the appellant.

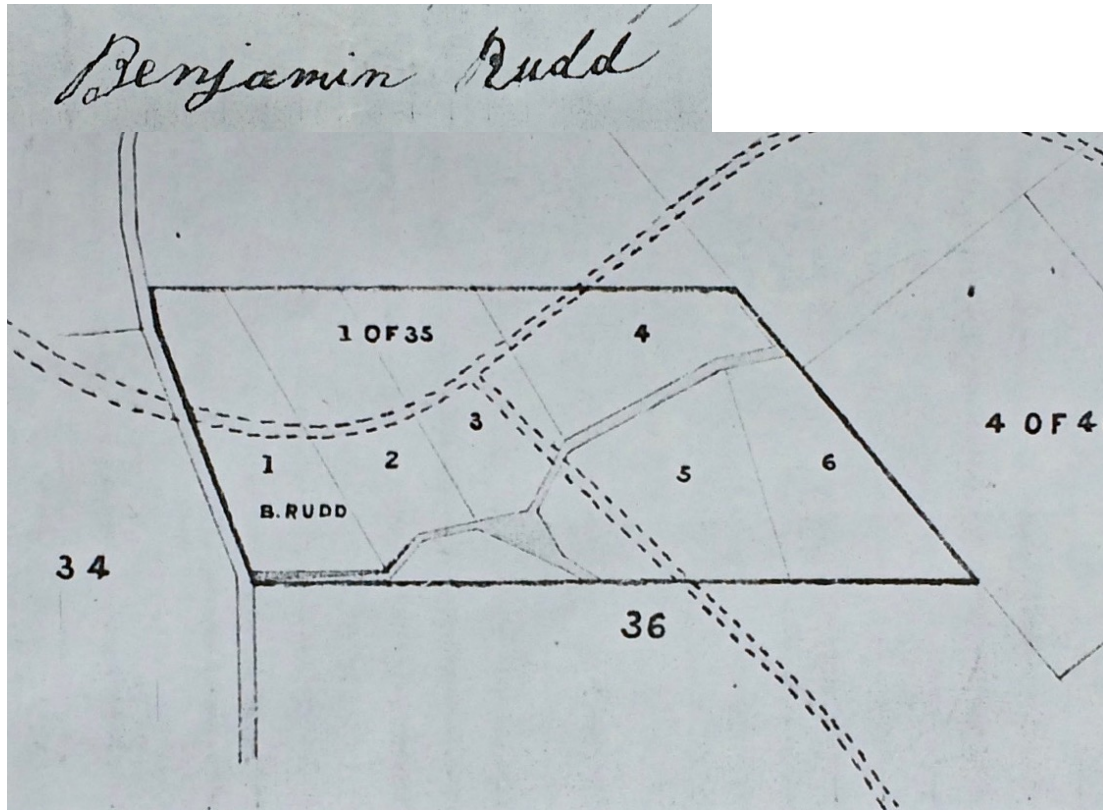
*P J McDonald* for the respondent.

*Cur ad vult*

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**A PERSONAL DIARY AND ACCOUNT OF EVENTS ASSOCIATED WITH THE RE-  
ESTABLISHING FOOT ACCESS ALONG SPIERS ROAD.**

**Ken Mason - Trustee and Projects Officer for the  
Ben Rudds Management Trust**

*To be published posthumously, if need be*