

Waitomo District Council

Road Encroachment Policy

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INTRODUCTION | KUPU ARATAKI

Waitomo District Council (WDC) owns 459.2km of sealed roads and 546.5km of unsealed roads in the district (this does not include areas of paper road). As the land and the airspace above it is owned by the Waitomo District Council, any person who seeks to use it for private purposes or otherwise do something that may obstruct any road may need to get authorisation from the Council (the landowner).

The need for the policy has arisen because WDC often receives requests from people who wish to erect an encroachment in the road reserve. This policy describes the terms and conditions and process to obtain authorisation and the Council's criteria to approve the encroachment application and grant a Licence to Occupy.

Key legislation applicable to the policy are –

- Section 10 of the Local Government Act 2002 – this enables the Council to meet the current and future needs of communities for good quality local infrastructure.
- Local Government Act 1974 – this gives Councils general powers in respect of roads
- This policy supports Waitomo District Council's Land Transport Bylaw 2024 as the regulatory requirement for encroachment licences in Waitomo District.

PURPOSE AND SCOPE | TE ARONGA ME TE KORAHĪ

Purpose

To provide a framework for clarifying the requirements for road encroachments on road reserve and enable a streamlined process in management of encroachments in the Waitomo District.

Scope

1. This policy applies to any proposed encroachments on or under all roads within the Waitomo District.
2. This policy does not apply to include activities and structures of utility companies where these relate to specific statutory rights that allow them to utilise legal road to provide various utility services.

DEFINITIONS | NGĀ WHAKAMĀRAMATANGA

Council	means the Waitomo District Council.
Encroachment licence	authorises a right to occupy an area of legal road. However, it does not give the licence holder exclusive possession in the way that a lease would. A licence can be revoked on one month's notice or such other terms determined by Transport. It does not provide an interest in the land. A licence will usually include a condition that public access must be maintained at all times.
Legal Road	has the same meaning as road in the Local Government Act 1974 (Section 315). In short, it covers the total area of land between road and adjoining property boundaries including:

- carriageway (formed road intended for vehicles)
- footpath including kerb and channelling, bridges gates, drains and other places within legal road intended for use by the public
- cycle ways and cycle paths
- land that is legally designated as road but is not currently formed as carriageway or footpath (road corridor, unformed or paper road)
- subsoil below the legal road
- airspace above the legal road

Licence to Occupy

is personal permission to enter the land and use it for specified purposes which does not confer any estate or interest in the land on the licensee.

Road

has the meaning given to it by Part 1 section 2 of the Land Transport Act 1998.

Road encroachment

occurs where:

- public access along legal road is restricted by excavation or an object, temporary or permanent, which is placed on legal road with or without prior approval of Council, or
- a deliberate or inadvertent action causes an area of legal road to be used or occupied for private benefit (exclusive or otherwise).

Unformed 'paper' road

- any road originally laid out over Crown land and marked on the ground and record maps; or
- any road originally laid out on Crown land under the authority of any Act or Ordinance, on any Crown grant record map, but not marked or laid out on the ground;

Where the road has not been constructed by any of gravelling, metalling, sealing, or permanently surfacing of the road undertaken by the Waitomo District Council, and is neither substantially formed or made for the use of the public.

1. Policy principles

- 1.1. Waitomo District Council as the landowner of legal roads has the discretion to consent to an encroachment and, if approved, provide an encroachment licence known as '**licence to occupy**' to the encroacher in accordance with this policy. Nothing in this policy requires Council to grant or decline an encroachment application.
- 1.2. The Council will consider the following guiding principles when assessing whether or not to allow an encroachment -
- a) Encroachment should not interfere with the public right to safely pass and repass on the road.
 - b) Encroachment should not interfere with any reasonably foreseeable future public uses of the particular road and where possible should also be removable.
 - c) Consult with people who are materially affected by a proposed encroachment.
 - d) Ensure that the health and safety of members of the public is protected.
 - e) Recognise that road reserve is Council-owned land, and the Council will seek to make an economic return from this asset where appropriate.
 - f) Encroachment should not interfere with the maintenance or utility carrying needs of the road reserve.
 - g) Encroachments with greater public and/or private benefits than detriments should generally be accepted; those with greater detriments than benefits generally should not.
 - h) Encroachments that provide access to properties are broadly in keeping with the original purpose of roading reserves.
 - i) Encroached land should be used for purposes that are in line with, and preferably support, Council's other plans, policies and objectives.
 - j) Encroachment should not significantly degrade amenity values, cultural values, and significant ecological values either as a result of a particular encroachment or through the cumulative effect of many encroachments.
 - k) There should not be ongoing costs to Council as a result of an encroachment.
 - l) The extent to which the encroachments will resolve significant community issues. Encroachments will not be allowed in circumstances where they have been proposed to resolve a neighbour or civil dispute.
- 1.3. The Council will apply the following criteria to determine the extent to which applications meet the above principles.
- Eligibility - the applicant is required to own/lease the adjoining land or land within the immediate vicinity of the encroachment.
 - Public benefit - the applicant will be required to assess any actual or perceived benefits and potential adverse effects.
 - Alternatives - if there are other practical alternatives to encroaching on road reserve then the application may be declined. Consideration will be given to the relative cost of any alternative.

- Consultation with affected parties - Council needs to be able to understand and assess the effects a proposed encroachment could have on other property owners. Therefore, if Council deems necessary, it may request that you consult with property owners in the vicinity of the proposed encroachment who could be materially affected by it.

If an adjoining property owner who may be affected by a proposed encroachment provides written consent to the proposal, the application will be considered by Council on the basis that that adjoining property owner is not affected. If no written consent is provided, then the Council will consider any comments raised by that property before deciding whether to grant a licence.

2. Issuing a licence

- 2.1. Encroachments that are operating in accordance with the conditions of an existing licence issued prior to this policy may continue under the conditions of that licence.
- 2.2. Any property owner seeking to occupy or use legal road for exclusive private purposes must apply to the Council as landowner of the road for an encroachment licence and pay the relevant fee. Examples of activities that require a licence include - buildings and structures, gates and fences, retaining walls, tree or shrub planting, landscaping (where an applicant has requested to plant in the road reserve) etc.
- 2.3. If the Council approves the application, a licence to occupy is issued to the property owner, that will set out the details and conditions attached to the encroachment.
- 2.4. All licences are subject to standard conditions as detailed in the licence agreement.
- 2.5. If in doubt as to whether an encroachment licence is needed, the applicant should contact the Council.

3. Terms and conditions

- 3.1. The ability of the members of the public to have right of access is fundamental.
- 3.2. A licence to occupy is only issued to a property owner and cannot be transferred. It may be revoked by the Council by giving one month's written notice to the licence holder.
- 3.3. The licence is not transferable and when a property is sold, the new owner will need to apply for a new licence. A new licence will be issued to the new owner, provided there are no outstanding issues with the encroachment. This means:
 - any structure should be in good repair.
 - all fees should have been paid.
 - the selling owner must not be in breach of the terms of the licence.
- 3.4. Encroachment licence (licence to occupy) that is issued to a property owner will be recorded on the Land Information Memorandum (LIM) for that property. However, the encroachment structure is not recorded on the Certificate of Title for the property.
- 3.5. Any costs associated with the installation and ongoing maintenance of the encroachment is at the cost of the property owner.
- 3.6. The property owner is responsible for any costs of damage to Council owned property associated with the encroachment.

- 3.7. The property owner is responsible for costs associated with the reinstatement of road reserve once an encroachment ceases. Any remedial works will be undertaken by a Council approved contractor at the full cost to the property owner.
- 3.8. An encroachment licence may cease or be required to cease where:
- the property owner surrenders the licence.
 - any associated costs remain unpaid.
 - breach of licence conditions occurs.
 - a review of the licence finds that the encroachment is no longer feasible in accordance with this policy due to changed circumstances or the need to use the road reserve for any other primary purpose.
- 3.9. An encroachment licence does not waive the need for any other relevant regulatory requirement including building consent and resource consent. The applicant will have to obtain all necessary consents and other requirements prior to the encroachment licence being issued.
- 3.10. Other special conditions may be applied to a licence on a case-by-case basis.

4. Compliance and monitoring

- 4.1. Erecting a structure on legal road (including the road reserve) without Council approval is a breach of section 357 of the Local Government Act 1974 and breach of the Public Places Bylaw 2023 and can lead to prosecution.

5. Fees

- 5.1. Fees and charges for encroachment licences are set as part of an Annual Plan or Long Term Plan process and are detailed in the relevant Schedule of Fees and Charges. The fees and charges are revised on an annual basis.
- 5.2. The following fees and charges are applicable for existing and proposed legal road encroachments.
- A non-refundable application fee for assessing an encroachment application.
 - An annual fee for licence to occupy if the encroachment application is approved.

6. Application Process

1. Submit a complete application form with fee. Application forms are available on the Council's website.
2. Application with adequate information to assess the proposed encroachment, for example – relevant plans and site photos.
3. Council acknowledges the application and may request additional information.
4. Council inspects the proposed encroachment site.
5. Council sends a letter granting or declining licence to occupy. If granted, the letter includes a licence and an aerial photograph showing the encroachment.
6. The applicant must, if they have not already, obtain any required regulatory consents.
7. The licence is signed, witnessed and returned to Council. Council signs the licence and a copy is sent to the applicant for their records. Note, construction cannot start until the licence is executed.

7. References

Local Government Act 1974 section 357 (1)(a)	https://www.legislation.govt.nz/act/public/1974/0066/latest/DLM420720.html
Local Government Act 2002 section 10	https://www.legislation.govt.nz/act/public/2002/0084/latest/DLM171803.html
Waitomo District Council's Land Transport Bylaw	https://www.waitomo.govt.nz/council/publications/bylaws/
Waitomo District Council's Public Places Bylaw	https://www.waitomo.govt.nz/council/publications/bylaws/