

P11-004 Policy on Encroachments on Road Reserve

Approved by the Council on 24 May 2011 and amended 30 July 2013.

POLICY PURPOSE

The purpose of this policy is to clarify the requirements for encroachments on road reserve and to enable transparent decision-making and management of encroachment licences in New Plymouth District.

POLICY STATEMENTS

This policy supports the provisions of the New Plymouth District Council Bylaw 2008 as the regulatory requirement for encroachment licences in New Plymouth District.

Definition of encroachment licence

Encroachment licence is a licence issued for private use of council land or airspace where structures are permitted.

The following statements provide information on the management and decision-making for encroachments on road reserve.

Council position on private use of road reserve

1. The Council holds and manages road reserve for specific current and future purposes. These include footpaths and formed roads for existing public use and unformed road for future roading network requirements. Road reserve may be utilised for private purposes as long as it meets the requirements of this policy and any other requirements as determined by the Council until such time as the land is required for its primary purpose.
2. Through the encroachment licence process the Council seeks to accommodate the public and private benefits associated with any encroachment by promoting a balance between the expectations of the wider community, property owners and users of the land.
3. The Council generally considers 'road stopping' (where the applicant purchases unformed legal road) to be the preferred procedure for accommodating buildings and structures of a permanent nature on road reserve. 'Road stopping' is preferred to an encroachment licence due to the longevity of the building or structure in relation to the primary purpose of the road reserve and its potential future use. 'Road stopping' removes the lands implied rights as a road and transfers the land into the ownership of the purchaser.

Restricted private use of road reserve: Subdivision entry structures

4. The Council does not permit subdivision entry structures (meaning any structure with or without a naming sign intended to indicate and/or name a developed area of land other than a public place) on road reserve and as a result will not grant an encroachment licence for any such structures.
5. It is expected that subdivision entry structures will be provided for on private land and maintained at the cost of the owner.
6. The Council will provide no financial contribution towards the maintenance of subdivision entry structures.
7. The Council reserves the right to remove any subdivision entry structure on road reserve in accordance with the provisions of the New Plymouth District Council Bylaw 2008 Part 5 Public Places.

Scope of policy

8. This policy applies to any proposed encroachments on all local road reserve and State Highway reserve in New Plymouth District.
9. This policy may also be applied to any proposed encroachments in any public place in New Plymouth District at the discretion of the Council.

Existing road reserve encroachment licences

10. Encroachments that are currently operating in accordance with the conditions of an existing licence issued prior to this policy may continue under the conditions of that licence.
11. Most existing encroachment licences are personal to the property owner. A licence is not transferable and where a property is sold, the new owner will need to apply for a new licence. The Council may take this opportunity to review the licence using this policy.

Requirement for an encroachment licence

12. The New Plymouth District Council Bylaw 2008 Part 5 Public Places requires that no person may occupy a road, reserve, park, or airspace above a road, reserve or park for any purpose unless that person has:
 - a) Obtained an encroachment licence, airspace or subsoil lease or licence to occupy from the Council; and
 - b) Paid the relevant fee.
13. Any property owner seeking to occupy or use road reserve for exclusive private purposes will need to obtain an encroachment licence. Examples of activities that require a licence include; buildings and structures, gates and fences, retaining walls, tree or shrub planting, landscaping etc.

Eligibility for an encroachment licence

14. To be eligible for an encroachment licence the applicant must own or lease the land adjoining or in the immediate vicinity of the proposed encroachment area.

Exemptions from requiring a licence

15. The requirement for an encroachment licence does not apply for the following:
- Utility companies as they have specific statutory rights to allow them to utilise legal road to provide various utility services.
 - Maintaining unformed areas of legal road e.g. mowing of grassed road reserve areas between the property boundary and the pavement.
 - Verandahs that are required by the District Plan (Verandahs not required by the District Plan do require an encroachment licence).
 - Signs in public places
 - Signs projecting over legal road air space that have their point of attachment on private land that meet the minimum clearances specified in the District Plan.
 - Displaying of goods
 - Trading in public places
 - Any valid easement agreement

Application process and requirements

16. A property owner seeking to occupy or use road reserve for any purpose must prepare and lodge an encroachment licence application to the Council.
17. An application must contain the required level and standard of information before it can be accepted for processing by the Council.

Principles for assessing encroachments

18. The following principles guide the assessment of encroachments on road reserve:

Encroachments on road reserve should:

- Not significantly obstruct or adversely affect the safe and efficient passage of pedestrians or vehicles.
- Not deter or inconvenience pedestrians or vehicles from using the adjacent public places.
- Not significantly affect access to or use of adjacent businesses and/or properties. Trade competition is excluded from consideration.

- Not, in terms of occupation and activity, extend beyond the boundaries of the approved licensed area.
- Be of a design and location that complement the existing streetscape and any heritage values of the area.
- Where possible provide benefit to the public.
- Be the most appropriate option for the activity.
- Not contradict any legal requirements and planning considerations.
- Not interfere with the maintenance or utility carrying needs of the road reserve.

Assessment criteria

19. To accompany the principles for encroachments on road reserve the following assessment criteria will be used to determine the extent to which applications meet the above principles:

- **Applicant eligibility-** is the applicant the owner or lessee of the adjoining land or an owner/lessee of land in the vicinity of the proposed encroachment area? The applicant is required to own/lease the adjoining land or land within the immediate vicinity of the encroachment and should continue to own/lease this land for the period of the encroachment.
- **Design and siting-** the design and siting of any encroachment will include an assessment of the following considerations. An application may be declined or changes may be required to be made to the design or siting where issues arise from any of the following considerations:
 - a. Assessment of how the location and design of the encroachment is consistent with and/or provides for; neighbourhood heritage values, streetscape and public views.
 - b. Assessment of the effect of the encroachment on the existing enjoyment of significant private views over public land that would otherwise remain for the foreseeable future.
 - c. Assessment of the adequacy of how the siting of the encroachment provides for the current or future public access and enjoyment of adjoining or nearby public places.
 - d. Assessment of how the encroachment provides for the current and future access to and safe passage of pedestrians and traffic to adjoining private land or businesses.
- **Assessment of public benefit-** could the encroachment provide any benefits for the public such as reduced maintenance or enhanced public enjoyment? Are there any mitigation measures or changes to the design or location that would enhance public

benefit? The applicant will be required to assess any actual or perceived benefits and potential adverse effects as part of the application process. The Council will then assess the benefits in terms of the environmental, social, cultural and economic well-being of the community.

- **Alternatives to encroachment-** is the encroachment onto road reserve necessary or can the applicant use their own land or make an arrangement with other private parties? The encroachment onto Council land should be the most appropriate/only option available to the applicant. 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.
- **Legislative requirements and planning considerations-** does the proposed encroachment require any other legislative approval? Is the encroachment contradictory to any of the underlying principles or planning considerations of the Operative New Plymouth District Plan, any relevant Reserve Management Plan, any other Council plan, community plan or other initiative for the area? The application may be declined if it is significantly contradictory to such considerations or if it cannot obtain any other necessary legal approvals.
- **Comment and feedback from property owners and occupiers in the immediate neighbourhood-** are there any persons that have been identified by the Council which may be affected by the proposed encroachment in relation to the assessment criteria as detailed previously in this policy? A Council officer may undertake a site visit to assess the proposed encroachment and identify any potentially affected parties. An identified affected party will then have an opportunity to provide comments and feedback on the proposed encroachment. Affected parties may include; the owner(s) of the property which is applying for the encroachment (if the property is leased), adjoining property owner(s), any relevant service providers. All affected party comments and feedback will be considered in the assessment of the encroachment licence application.

Issuing a licence

20. A licence is not transferable and when a property or business is sold, the new owners will need to apply for a new licence.
21. Until such time as a new licence is issued, the existing licence remains and the encroachment is the responsibility of the existing licensee.
22. All licences are subject to standard conditions as detailed in the licence agreement.
23. Further site specific conditions may be applied to an encroachment licence.
24. All conditions are the responsibility of the licensee and must be met for the encroachment to continue.

Costs

25. 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.
26. Annual rentals are reviewed in accordance with the Schedule of Fees and Charges.
27. The licensee is responsible for all costs associated with the installation and ongoing maintenance of the encroachment.
28. The licensee is responsible for any costs of damage to Council owned property associated with the encroachment.
29. The licensee 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 licensee.

Situations when the licence may cease

30. An encroachment licence may cease or be required to cease where:
 - The licensee surrenders the licence.
 - Any associated costs remain unpaid.
 - A 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.

Other considerations

31. 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.

POLICY CONTACT

The policy holder is the Property Assets Team within the Community Asset Group.

POLICY REVIEW

This policy shall be reviewed in 2018 in line with the next review of the New Plymouth District Council Bylaw 2008 Part 5 Public Places.