



Road Encroachment and Sale Policy

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**Absolutely Positively
Wellington City Council**

Me Heke Ki Pōneke



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1. Introduction

Wellington’s topography is unique with steep hills and little flat land. Its street layout was largely derived from English town planning processes. Often it did not take the steepness of the land into account. As a result, the formed roads are often much narrower than the width of the land legally designated as road and there are far fewer formally planted street trees and berms compared with cities such as Christchurch and Auckland. Some of the planned roads were never formed and are still bush or small foot walkways. Other roads are only partially formed.

The Council owns more than 660 kilometres of legal road around the city. This is made up of unformed road, footpaths and actual formed road. The Council believes its unformed road, the airspace above roads, and the subsoil below roads can be utilised for activities other than roading provided this does not unreasonably interfere with existing or possible future uses of the legal road. Because the land and the airspace above it is owned by the Council, people wishing to use it for private purposes may need to get authorisation (an encroachment licence or a lease) from the Council. Wellingtonians already hold around 5,800 road encroachment licences mainly for parking, access or outdoor living.

This policy describes when a licence or lease is required and the criteria the Council will use to decide whether to grant one. It also describes the terms and conditions and fees applicable to licences and leases for encroachments under, on or above legal roads.

Finally, there may be cases where it becomes clear that an area of legal road will never be needed for actual roading. This policy describes the process that must be adhered to if the Council, usually at the request of a nearby landowner, considers that a legal road should be stopped and the land sold.

2. Objectives

This Policy aims to provide a framework for consistent decision-making in respect of encroachments under, on or above legal road in Wellington City. The objectives of the policy are to facilitate property owners making encroachments where, in the view of Council, these are expected to have overall net benefits; to establish a fee structure that reasonably reflects the degree to which benefits accrue privately, publicly or some combination of the two; and to aid the Council in meeting its legal obligations.



3. Definitions

In terms of this Policy, the following definitions apply.

Access ways include driveways, bridges, cable cars or stairs that cross legal road and provide access to private property.

Footpath is that part of any legal road that is laid out or constructed primarily for the use of pedestrians and includes the edging, kerbing and channelling.

Hedge in respect of the definition of a "structure", is a dense area of vegetation that is predominately linear and that has the effect of excluding the public from an area of legal road so that an adjacent property owner may enjoy the private use of that legal road.

Legal road has the same meaning as in the Local Government Act 1974¹. In summary it covers the:

- carriageway (formed road)
- footpath including kerbs and channelling
- land that is legally road but is not currently formed as carriageway or footpath (sometimes referred to as 'unformed road' or a 'paper road')
- subsoil below the legal road
- airspace above the legal road.

Private use covers both individual and commercial use and refers to situations where those that directly benefit can be identified, for example, the owner of a garage or balcony. Residential and commercial categories are determined by the property's ratepayer status.

Public benefit occurs when those that directly benefit cannot be identified or cannot be excluded from using the service, for example pedestrian or vehicle access.

¹ The relevant sections of the 1974 Act were not repealed when the 2002 Act was passed.

Restricted public access and enclosed areas are where a deliberate action causes a restriction that provides an associated private benefit. This includes circumstances where there is:

- exclusive private use of a portion of legal road, or
- a barrier, including a visual barrier, that can be reasonably interpreted as restricting access by the general public.

Road encroachment is where either public access to legal road is restricted or a deliberate action causes an area of legal road to be used for private use (exclusive or otherwise).

A **road encroachment lease** is a property right to authorise exclusive occupation of airspace or subsoil. It creates an interest in the airspace or subsoil for the lease term, subject to compliance with the lease terms (such as payment of rental).

A **road encroachment licence** authorises a right to occupy land. A licence does not provide an interest in the land and can be revoked on one month's notice.

Road stopping is where the status of legal road is changed into freehold land in situations where it is clear that the legal road is surplus to the Council's operational requirements. This change enables the Council to sell the land.

Structure in respect of legal road includes any kind of improvement such as:

- parking structures, for example garages, car pads, car decks, car ports, boatsheds
- access structures, for example driveways, stairs, retaining walls, cable cars, gates, covered access ways
- house, for example any part of a primary or secondary building, eaves, porches, decks, balconies, conservatories
- boundary markings, for example walls, fences, hedges.

Unformed road is any land that forms part of the legal road but is not used as a carriageway or footpath. It is commonly called road reserve.



4. Policy principles

The Council is empowered to authorise any property owner ('the encroacher') to occupy an area of legal road owned and controlled by the Council through the Wellington Consolidated Bylaw 2008: Part 5 – Public Places. Council (as landowner of legal roads) has the discretion to consent to an encroachment and, if approved, provide an encroachment licence or lease to the encroacher in accordance with this Policy.

Decisions on encroachments are at the Council's discretion; nothing in this policy requires officers to grant an encroachment or to reject an encroachment application. The following principles are taken into account when assessing whether or not to allow an encroachment:

- Recognising that road reserve is Council-owned land, the Council will seek to make an economic return from this asset where appropriate.
- Encroachments with greater public and/or private benefits than detriments should generally be accepted; those with greater detriments than benefits generally should not.
- Encroachments with low public but high private benefit, especially those that exclude public use, should generally incur higher rental charges.
- Encroachments for commercial properties should incur higher rental charges than non-commercial encroachments.
- People who are materially affected by a proposed encroachment should be consulted and their views considered when decisions are made.
- Encroachments that provide access to properties are broadly in keeping with the original purpose of roading reserves.
- Encroachments should not interfere with any reasonably foreseeable future public uses of the particular road reserve or should be removable.
- Encroached land should be used for purposes that are in line with, and preferably support, Council's other plans, policies and objectives.
- While not limiting the generality of the above principle, amenity values, cultural values, and significant ecological values should not be significantly degraded by the encroachment.
- Road reserve contributes positively to the overall look and feel of Wellington.

5. Key aspects of the policy

5.1 What this policy covers

This policy covers all occupation or exclusive private use of legal road within Wellington City with the following exceptions:

- activities on formed footpaths and formed roads. The Footpath Management Policy provides a framework for the use of footpath areas for retail activities. Activities on formed road are subject to other legislative, regulatory and policy requirements.
- legal road within areas zoned as rural in the Wellington City District Plan.
- verandahs that are specifically designed and used to provide cover for pedestrians. These are covered by District Plan requirements.
- 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.

This Policy applies to existing and proposed buildings.

5.2 When is a licence or lease needed?

Any property owner seeking to occupy or use legal road for exclusive private purposes must apply to the Council as landowner of the road.

A licence is required if there are structures or any form of public access restriction associated with the road encroachment.

This includes:

- the use of legal road for garages, car pads, decks, gardens and commercial purposes
- access structures such as stairs that do not follow the contour of the land, driveways, bridges, cable cars and retaining walls
- the use of airspace above legal road for eaves, balconies or similar structures (unless an airspace lease has been obtained)
- the use of subsoil for private purposes (unless a subsoil lease has been obtained).

The option of a lease is available for airspace and subsoil encroachments only. Where these types of encroachments are proposed for longer-term use, the lease option can provide property owners with greater certainty about the continuity of the encroachment for a specified period of time.

There is also the option of seeking to have a legal road stopped so that the landowner may purchase the land. This process is subject to specific legislative requirements and is relatively expensive. It is described in section 7 and Annex 2 of this policy.

If in doubt as to whether an encroachment licence or lease is needed you should contact the Council (see Section 8: Further Information).

5.3 When is a licence not needed?

A road encroachment licence is not required for:

- access ways that follow the natural contours of the land provided there are no structures (with the exception of basic hand/safety rails) or public access restrictions. However, the prospective occupier of legal road is still required to apply to the Council (as landowner) for consent and any necessary regulatory consents¹.
- maintaining unformed areas of legal road. Residents are encouraged to maintain and beautify these areas in their streets. However, residents should refer to the Council's Verge's Policy and may wish to take advantage of the Council's services such as selective vegetation removal and pruning, growth cutting on banks, free plants, weed spraying and noxious weed control. These areas cannot have structures, such as fences or hedges put on them or features that may reasonably be interpreted as restricting public access.

5.4 Who can apply?

Any property owner who has legal road adjoining their property may apply for a road encroachment licence. In some cases a property owner may apply when the legal road is not adjoining but is in the vicinity of that owner's property.



¹ Examples of other regulatory consents that might be required include a Resource Consent and/or Building Consent.



5.5 Criteria for evaluating road encroachment proposals

The Council will apply criteria to help evaluate whether a proposed encroachment should be approved and the fee structure appropriate to the encroachment (see section 5.9 Fees).

The criteria are divided into primary and secondary criteria. Primary criteria are legal factors that must be considered by Council when considering an encroachment application in accordance with Part 5 clause 17.2 of the Wellington City Consolidated Bylaw (2008). They are:

- a proposed encroachment must not compromise the primary use of legal road to facilitate free pedestrian and traffic movement; and
- a proposed encroachment must not unreasonably interfere with a property owners' right of access to any road across the frontage between the road and the private property.

Secondary criteria provide a framework for evaluating the overall benefits and detriments of a proposal and where those benefits and detriments are likely to fall. Secondary criteria are:

- What benefits would the proposed encroachment provide? For example to what extent is it likely to:
 - provide vehicle or pedestrian access to a property
 - enhance outdoor living, recreation, private or public amenity values
 - improve public safety and street use – for example provide off-street parking
 - improve security – for example through lighting or 'eyes on the street'

- improve biodiversity
- support any strategic, policy or plan objectives of the Council
- improve sense of vibrancy
- generate a rental income for the Council
- encourage development and/or economic activity
- provide other benefits.
- What would be the detriments of the proposed encroachment? For example to what extent is it likely to:
 - degrade significant vegetation
 - degrade streetscape amenity values
 - degrade significant public or private vistas
 - degrade any other amenity, cultural, environmental, or heritage values
 - reduce safety
 - exclude the public from using the relevant land
 - be difficult or necessary to reverse or remove in the future. This is assessed based on the likelihood that the encroachment would cause an impediment to any foreseeable use of the road reserve space
 - unreasonably impede the use of the land by those with rights to it such as utility companies
 - create other detriments.

In addition Council will consider other factors, including:

- Are there already similar encroachments in the vicinity?

- Can the proposal be reasonably accommodated on private land (particularly applicable where no rental income would be generated from the proposed encroachment)?
- Any other relevant factors.

Significant vegetation will be assessed by the Council on a case-by-case basis. A range of factors indicate that vegetation is significant including:

- trees or vegetation over two metres in height or with a circumference greater than 200mm measured at 1.45 metres from ground level
- areas of vegetation with a site coverage of greater than five square metres excluding pest plants as defined by the Wellington City Council Pest Management Plan
- existing roadside gardens or street trees formally planted and maintained by the Parks and Gardens Business Unit
- officers will also consider other values including maturity, ecological context, potential life span, whether the vegetation is indigenous to the region, its rarity, health and aesthetic quality.
- certain trees are noted in the District Plan as heritage trees and are protected under that Plan.

The Council's decision to approve an encroachment or not depends on an overall assessment of a proposal's benefits and detriments as well as other factors it may choose to consider, such as those noted above. In many cases judgements will need to be made not only on what the benefits and detriments of a proposal might be, but also the magnitude of those benefits and detriments and the balance between them.

Critically, the views of those people potentially affected by the proposal, especially those directly affected, will be used to inform Council's decision-making (see section 5.6 Consultation with Affected Parties).

5.6 Consultation with affected parties

Council needs to be able to understand and assess the effects a proposed encroachment could have on other property owners. The Council therefore will want to know the views of property owners in the vicinity of the proposed encroachment who could be materially affected by it. This is especially so in cases:

- where an adjoining property owner believes their significant vistas and/or amenity values could be affected by a proposed encroachment
- where the proposed encroachment covers another property owner's legal road frontage.

The Council will also want to be assured that the views of third parties are based on accurate information about the proposal.

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 an encroachment. However, the Council retains the ultimate discretion as to whether to agree to any encroachment, guided by the principles in this policy.

5.7 Terms and conditions of encroachment licences and leases

5.7.1 LICENCES

An encroachment licence is only issued to a property owner and cannot be transferred. It may be revoked by the Council by giving one month's notice to the licence holder. This means applicants for road encroachment licences need to consider the risk and the associated implications if their licence ever needs to be revoked.

Where certainty over the continuation of an encroachment is required, other options may be more appropriate. These include purchasing the land (see section 7: Sale of Legal Road) or obtaining a lease – in the case of airspace and subsoil encroachments only.

When a property is sold any encroachment structure is deemed to also be "sold" and the new property owner becomes fully responsible for the maintenance of the encroachment. The Council must be notified about the change of ownership. A new encroachment licence will be issued to the new owner following notification, 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
- the licence does not have any special conditions, for example, special termination clauses (also see section 5.8 below).

In addition, any encroachment licence that is issued to a property owner will be recorded on the Land Information Memorandum (LIM) for that property. Please note, however, the encroachment structure is not recorded on the Certificate of Title for the property.

Should an encroachment licence holder want to change the use of the encroachment they must apply to the Council (as landowner) for written consent.

Other special conditions may be applied to a licence on a case-by-case basis.





5.7.2 SPECIAL CONDITIONS FOR AIRSPACE LICENCES

Airspace encroachments occur when a building has a structure, such as a balcony, façade, dwelling, conservatory or eaves that encroaches into airspace above legal road. These are usually for residential purposes but there are also a limited number of commercial airspace encroachments, for example signage and café extensions. In addition to the above terms and conditions, airspace encroachment licences also include:

- proof of public liability insurance to the value of \$1,000,000 must be provided annually
- the signature of the body corporate is required on the encroachment licence when a body corporate is part of the ownership structure of a building
- where there are several separate airspace encroachments above each other belonging to the same owner, for example several balconies and eaves, the rental will be assessed on the cumulative encroachment area.

5.7.3 AIRSPACE AND SUBSOIL LEASES

The Council may allow more permanent – that is difficult to remove – structures into airspace above or subsoil below a legal road by issuing a lease for that airspace or subsoil. The key differences between licences and leases are that leases:

- provide the lessee with a legal interest in the airspace or subsoil
- will be for the life of a building
- will be revocable with six months' notice from the Council if the Council requires the land for its own use or an alternative use
- will be reissued to a new property owner for the outstanding term of the lease at the date of any property transaction.

With respect to leases for **airspace** the following terms and conditions will apply:

- The airspace encroachment must not be:
 - for wet room use such as a kitchen, bathroom or laundry
 - more than 25 percent of the room it is part of
 - instrumental to the functioning of the apartment or building it is attached to. If the encroachment was to be removed the room must still function for its intended purpose.
- Other terms and conditions for airspace leases are similar to those of an airspace encroachment licence (see 5.7.2 above).

Other special conditions may be applied to an airspace or subsoil lease on a case-by-case basis.

5.8 Encroachments onto or near Town Belt or other Reserve land

Historically, the Council granted licences for encroachments that were located partially on legal road and partially on land held under the Reserves Act or Town Belt Deed. The protection of these types of land is being more rigorously pursued. This has implications for both Town Belt and Reserve land itself and any legal road adjacent to such lands.

Where an encroachment onto legal road is proposed and the adjacent land is subject to the Town Belt Deed or is Reserve land, the provisions Town Belt Management Plan, relevant reserve management plan or Reserves Act will also apply to the legal road. This means that applications for any new encroachments onto legal road that is adjacent to Town Belt or Reserve land will not be permitted.



In cases where there are existing encroachment licences for legal road that is adjacent to Town Belt or Reserve lands, these will be amended when the next licence is required to be issued (for example a change of ownership or use of the encroachment) to include a special termination clause. It will, without limiting the Council's normal termination powers, state that no further licence will be issued after that one. At that point the owner of the structure must remove it from legal road adjacent to the Town Belt or Reserve land. In cases where this would render the encroachment unusable, the whole encroachment will have to be removed.

Existing encroachments onto Town Belt or Reserve land itself are subject to the relevant policies established under the Town Belt Management Plan, reserve management plan or Reserve Act. Property owners should contact the Council for more information (see Section 8: Further Information).

5.9 Fees

This section outlines the fees and rental charges applicable to road encroachments.

Residential annual rental fees will be adjusted annually according to Consumer Price Index changes and reviewed every three years by the Council as part of its long-term planning process (LTP). The fees review will take into consideration the latest relevant rateable land values for residential properties.

The following fees and charges are applicable for existing and proposed legal road encroachments.

- A *landowner consent application fee* for Council (as landowner) assessing an encroachment and, if approved, issuing a licence or lease that provides for the private occupation of legal road. The fee is also payable where the Council undertakes an assessment of an existing illegal encroachment that is unlicensed and a licence is subsequently issued.
- An *administration fee* is for changes to existing licences or leases. This applies to changes in:
 - the ownership of the licence or lease holder
 - the use of the road encroachment
 - the size of an existing structure on the road encroachment.
- An annual rental for the use of the legal road. The annual rental is determined according to the nature and size of the encroachment (see 5.9.1 Annual Road Encroachment Rental).
- For commercial encroachments a market rental will be charged.
- For airspace leases a one-off charge covering the life of the lease may be charged (see 5.9.2).

The market rental will be determined by an independent valuer who may be appointed by the Council or be chosen by the licence applicant/holder, subject to the approval of the Council. The cost of obtaining the valuation will be paid by the licence applicant/holder.

5.9.1 ANNUAL ROAD ENCRoACHMENT RENTAL FOR RESIDENTIAL ENCRoACHMENTS

The *annual rental* applies in cases where:

- people cause restricted public access or establish enclosed areas and the total encroachment is greater than 50 square metres; or
- the encroachment has a structure other than a structure exclusively for access (see table 1).

In both cases minimum annual charges apply.

When the encroachment does not restrict public access and there are no structures on the encroachment then no rental is required. Also, no rental is required where a structure is for access only.

Table 1 outlines when approval, licences, administration fees and annual rentals are applicable.

Further information on actual fees and charges can be obtained from the Council (see Section 8: Further Information).

TYPE OF ENCRoACHMENT	
Unrestricted public access and no structures	No licence required No rental payable
Restricted public access but no structures are on the encroachment. See definition of " <i>restricted public access</i> ".	Council approval and licence required Application fee or administration fee payable Annual rental payable but only for area in excess of 50m ² Minimum annual rental applies for areas in excess of 50m ²
Encroachment with structures for access only. See definition of " <i>structures</i> ".	Council approval and licence required Application fee or administration fee payable No annual rental payable
Encroachment with structures (other than structures for access only). See definition of " <i>structures</i> ".	Council approval and licence or lease required Application fee or administration fee payable Annual rental payable Minimum annual rental applies
Special Case: Encroachment with structures that are fences and hedges only (other than structures for access only) and where the encroachment licence was in place prior to the adoption of this policy in April 2011. See definition of " <i>structures</i> " and explanatory note below.	Annual rental payable but only for area in excess of 50m ² Minimum annual rental applies for areas in excess of 50m ²

Explanatory note for "Special case": The special case implements a Council decision made when this policy was adopted in April 2011 that changes to the fences and hedges policy made at the time should only apply in respect of new licences. This means that when a property which has an encroachment licence associated with it is sold, or when a licence is transferred to another person, or when there are significant changes to the conditions of a licence, then the existing licence will be cancelled and a new licence will be issued (sometimes referred to as "re-issued"). In these circumstances the special case will not apply to the new licence and the holder of the new licence will be required to pay an annual rental fee for all land within the encroachment.

5.9.2 BALCONIES AND AIRSPACE LEASES

For new airspaces leases the *annual rental* will be replaced by a one-off fee covering the duration of the proposed lease – generally the lifetime of the building to which the lease relates. The fee will be based on a market valuation of the proposed airspace encroachment lease. The valuation will need to reflect the particular conditions of a lease, including any rights retained by the Council to revoke the lease in certain circumstances.

Holders of existing airspace leases have the option of obtaining a valuation for their lease and, based on this valuation, paying a signal fee to cover the remaining life of the lease. Property owners who do not wish to take up this option will be subject to the *annual rental* structure applicable to other encroachment licences.

5.9.3 FEE WAIVERS

The Council retains the discretion to waive the annual rental where a road encroachment is created by relocating a fence or wall onto legal road in order to address a safety concern. This may occur on any or all of the following occasions:

- There is a significant hazard
- There is an associated public safety issue
- It is impracticable or undesirable to locate the fence or wall on the boundary of the adjoining private land.

When the Council is considering waiving the annual rental it will determine whether the alternatives to an encroachment will be ineffective. In addition, the encroachment must:

- assist with the Council's obligation to ensure public safety
- fully address the public safety concern
- primarily be for the purpose of promoting public safety.

In instances where an encroachment is created to address a public safety concern the:

- line of the fence or wall shall be determined by the Council
- fence or wall must comply with the Building Act and District Plan requirements
- design of the fence or wall shall be approved by the Council.

For land encroachments, the Council also retains the discretion to waive the annual rental in cases where the steepness of the road reserve is assessed as making it unusable for other purposes.



6. Compliance and monitoring

The Council regularly discovers structures on legal road that were built without obtaining Council approval or an encroachment licence or lease. Some of these structures have been there for a number of years and may have been built by a previous owner of the adjoining private property, while others are recent or in the process of being built.

Erecting a structure on legal road without Council approval or an encroachment licence or lease is a breach of the Wellington Consolidated Bylaw 2008 and can lead to prosecution. It is the responsibility of the current owner of the property, who benefits from the encroachment, to apply for land owner consent and to obtain an encroachment licence or lease from the Council's Property Unit.

7. Sale of legal road

The Council may sell legal road to a property owner when it considers that the land is not needed for utilities, roads or footpaths in the future and private occupation will not compromise amenity or environmental values.

The sale of legal road for private use is a legal process which is outlined in Annex 2. It is subject to statutory and planning requirements and requires the section of road to be legally 'stopped'².

The process, under the Tenth Schedule of the Local Government Act 1974, can involve appeals to the Environment Court. The Public Works Act also provides a mechanism for stopping legal roads. The Council will generally apply the Local Government Act process for the stopping and sale of unformed legal road.

² Changing the status of land from legal road to freehold land.

Eligibility to purchase any surplus legal road from the Council (unless it can be subdivided for use as a building site) is limited to the adjoining property owner.

Costs associated with road stopping and amalgamation of land with an existing title must be met by the purchaser. The Council will make a deduction for costs from the land valuation in accordance with the following policy:

- property owners meet costs as they are incurred, but a proportion of these costs will be deducted from the land valuation in order to establish a final settlement price;
- deductions are the lesser of: actual costs; or an amount calculated as 15 percent of the land value plus \$500 – up to a maximum deduction of \$12,500;
- for transactions below \$15,000 of land value, deductions, if any, will be by agreement between the Council and applicants, but will not exceed the deductions applicable using the formula above.

The sale of any legal road will not generally be permitted where public utilities (such as pipes and cables) are located underneath, unless the prospective purchaser undertakes to relocate the services at their cost or an easement or other arrangement satisfactory to the utility operator(s) can be agreed. The Council will also need to be satisfied that the land is not likely to be required for the location of services at any point in the future.

The market value of legal road being sold by the Council will be determined by an independent registered valuer who is a member of the New Zealand Institute of Valuers. Valuations for establishing the price for purchase are based on the added value to the existing title – based on valuations before and after the addition of the land.

Prospective purchasers have the opportunity to lock in a land valuation early in the road stopping process, and that valuation will be binding on both parties provided the road stopping is completed within 18 months, subject to final survey. This period may be extended at the Council's discretion, for example where a stopping proposal is referred to the Environment Court. Where road stopping takes longer than 18 months, the Council may require any existing valuation to be updated before land is transferred, and the final settlement price will be based on the latest land valuation.

8. Further information

To speak to someone directly about the Wellington City Council Road Encroachment and Sale Policy please call the Council on 499 4444 and ask for the Encroachments and Road Stopping Team.

ANNEX 1

APPLICATION PROCESS FOR AN ENCROACHMENT LICENCE OR LEASE

In most cases the application process has the following steps:

1. application to Council for approval of a new encroachment or changes to an existing encroachment (size or use)
2. consultation is undertaken with neighbours and affected parties and, if possible, written consent is sought from any affected property owner(s)
3. consultation is undertaken with utility companies
4. Council acknowledges the application and may request additional information
5. Council inspects the proposed encroachment site
6. Council sends a letter granting or declining consent. If granted, the letter includes a licence or lease and an aerial photograph showing the encroachment
7. the applicant must, if they haven't already, obtain any required regulatory consents
8. the licence or lease is signed, witnessed and returned to Council. Council signs the licence/lease and a copy is sent to the applicant for their records. Note, construction cannot start until the licence is executed
9. the applicant has 18 months to complete any construction on the encroachment land, unless a written extension is sought and granted.

In most cases the issuing of a new licence or lease for an existing encroachment has the following steps:

1. change of ownership identified by the Council (through notification from the old or new owner or the rates system)
2. letter and licence/lease documents sent to the new owner for signing
3. once the licence or lease is signed, witnessed and returned to the Council, the Council signs the licence/lease and a copy is sent to the applicant for their records.

ANNEX 2

SUMMARY OF PROCESS FOR SALE OF LEGAL ROAD

For detailed information on road stopping and the sale of legal road please contact the Council's Property Business Unit on 499 4444. What follows is a summary of the process.

The applicant prepares a survey plan defining the area of legal road to be stopped. The Council publicly notifies the proposal and provides the opportunity for objections. The road stopping proposal must be made available to the general public for inspection, together with the reasons why the road is to be stopped. The public has 40 days to object.

The Council must:

- issue at least two public notices calling for objections to the proposal to stop the road (any person may object)
- notify all owners and occupiers of land adjoining the proposed road stopping.

The Council may, at its discretion, consult with other affected parties.

If no objections are received within the time limit, the Council may, by public notice, declare the road stopped. The road ceases to be a road at that stage and may be sold.

If objections are received, the Council must decide if they are justified. This occurs at a Council hearing. Any person objecting will be given the opportunity to attend the Council hearing.

A Council meeting is held to make a decision on the objections. The Council can either:

- decide to allow the objections and decline the road stopping (meaning the subsequent sale of the land to the adjacent owner cannot go ahead), or
- decide to reject the objections and continue with the road stopping. If the objections are not withdrawn or otherwise resolved, the Council must send the objections, together with the survey plans, and a full description of the proposed alterations to the Environment Court.

The referral to the Environment Court may not necessarily result in a court hearing. The Environment Court is able to arrange mediation to resolve any objections before any hearing.

The valuation of the land will be assessed on the basis that the additional land will add value to the applicant's existing title. This valuation will take variations in the final survey area, any market movement in land values since the date of the initial valuation and any further conditions imposed by the Council into consideration.

The legal costs incurred by the Council will be recovered from the applicant, but may be included in any estimation of costs for the purposes of applying the costs deduction policy described in section 7.