

ROAD ENCROACHMENT AND SALE POLICY

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Road Encroachment and Sale Policy

1 INTRODUCTION

Wellington's topography is unique with steep hills and little flat land. This has resulted in narrow roads with limited room for on-street parking and many properties with foot access only. The street layout was largely derived from English town planning processes and did not take the steepness of the land into account. As a result, the 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 other cities such as Christchurch and Auckland. Some of the planned roads were never formed and are still bush or just small foot walkways while other roads are only partially formed.

The Council administers more than 660 kilometres of legal road around the city which is made up of unformed road (road reserve), footpaths and actual formed road. The Council believes the unformed road, the airspace above, and the subsoil below legal road can be utilised until it is actually needed for footpaths or actual road. If it becomes clear that this will never be the case, the designation of the land may be changed and the land can be sold.

Wellingtonians hold around 5,700 road encroachment licences that allow them to use 'public' legal road for private purposes. The licences are usually for garages and carports or to provide access to properties that would otherwise be difficult to reach. Some pieces of legal road are maintained as garden 'encroachments' by adjacent landowners. This Policy covers the regulation and management of the private use and the sale of legal road.

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2 OBJECTIVES

This Policy aims to provide a framework for consistent decision making to allow encroachments onto legal road in Wellington City. It will ensure the Council grants land owner consent and issues road encroachment licences or leases on a consistent basis and that it meets its legal responsibilities with regard to the use or sale of legal road. The Policy will facilitate:

- safety for pedestrians and vehicles by allowing drive-on access to properties and off street parking and will encourage less crime through environmental design
- connected indoor/outdoor living
- safe building structures by permitting subsoil encroachments to strengthen foundations
- decisions that make a positive contribution to the existing amenity of the area, including the environment
- an awareness of the options available to gain private access to legal road through a licence, a lease or purchase of the road
- achieving the maximum possible return on the road reserve asset after taking the associated public and private benefits into consideration.

3 DEFINITIONS

In terms of this Policy, the following definitions apply.

Access ways include driveways, paths, cable cars or steps 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.

Land owner consent is the Council's consent, as owner of the land, to allow publicly available legal road to be used for private purposes.

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

- carriageway (formed road)
- footpath including kerbs and channelling
- land that is legally designated as road but is not currently formed as carriageway or footpath (road reserve)
- 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 the use of footpaths.

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 that can be reasonably interpreted as restricting access by the general public, for example a fence or hedge.

Road encroachment occurs 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 and creates certainty of the timeframe for occupation, subject to compliance with the lease terms (such as payment of rental). A lease therefore has greater formality and certainty than a licence. The leaseholder can legally stop anyone from using the area.

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

A **road encroachment licence** authorises a right to occupy land. However, it does not give the licence holder the same protection as a road encroachment lease. In particular, a licence can be revoked on one month's notice. Also, it does not provide an interest in the land – and therefore does not create the same rights or expectations as a lease.

Road stopping occurs where the designation 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.

Significant trees and vegetation (guide only):

Significant trees and vegetation are assessed by the Council on a case by case basis

1. A range of factors are considered when assessing the significance of a tree and vegetation and include, but are not limited to the following:
 - Maturity, for example, height, diameter, in relation to typical sizes for that species
 - Values, for example, ecological context, potential lifespan, indigenous/native to the region, amenity, aesthetic, rarity
 - Health, for example, form/structure, defects
 - Environmental situation, for example, root stability, wind zone
2. Certain trees are noted in the District Plan as heritage trees and are protected under that Plan.

A **structure** on 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 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 unoccupied or undeveloped space that forms part of the legal road. It is commonly called road reserve.

Deleted: <#>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.¶

4 POLICY PRINCIPLES

The Council is empowered to authorise any property owner ('the encroacher') to occupy an area of road owned and controlled by the Council through the Wellington Consolidated Bylaw ~~2008: Part 5 – Public Places~~. It gives the Council discretion to authorise an encroachment by granting land owner consent and, if required, an encroachment licence or lease to the encroacher in accordance with this Policy.

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To aid decision-making about proposed encroachments onto legal road the following principles are applied to all applications for road encroachments.

Protection of rights

The primary Policy principle is that the public ~~has unimpeded access to legal road~~ (including roads and footpaths) to facilitate free pedestrian and traffic movement and access to private property. To obtain the right to occupy legal road, the applicant must satisfy the Council that the encroachment will not unduly compromise the primary use of the legal road. The Council has to ensure that other affected property owners' rights are protected. Utility companies have statutory rights to use the legal road.

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Protection of community amenity

Legal road is available for public use and the associated visual impression impacts on the sense of place² and influences the activities that take place in that space. The road corridor is important as it creates a compact, well integrated city layout. This means that residents and businesses can enjoy the benefits of a large urban area but can move around with ease. The road corridor also contributes to the aesthetics of the area, the streetscape value and environmental and ecology purposes.

The Council aims to balance the public and private benefits associated with any proposed road encroachment by promoting a balance between the expectations of the wider community, property owners and users of the area involved. Road encroachments present an opportunity to promote safety in an area, for example by providing 'eyes on the street or social surveillance'. The Council will therefore take into account whether the proposed private occupation of legal road will enhance the area and facilitate higher quality and safer use of private land than could otherwise be reasonably achieved.

Public and private benefit

Unformed legal road can have significant public benefit. For example, it may provide space for utilities, add amenity value, and may allow future development of roads and footpaths. The Policy formalises the philosophy that private use can be made of legal road *and* have public benefits. For example, the revenue generated will benefit all ratepayers or the facilitation of off-street parking will benefit the vehicle owner and the public as it helps to make Wellington's narrow roads easier to drive along. Allowing balconies and bay windows facing the street promotes neighbourhood

² 'place' refers to the natural and built environment and how people, through their culture and economy mould it.

safety. In many cases property owners maintain pieces of adjacent legal road which contribute to the amenity of the area.

Disposal of assets

Wellington's topography and legal road layout means that some parts of the legal road may never be required for roading, amenity, utility or ecological purposes or other Council business. If the legal road can be declared surplus to the Council's foreseeable requirements it can be stopped, after proceeding through the statutory process, and the land sold.

Transparency

It is important that the Council's position on road encroachments and the sale of legal road is clearly outlined in the Policy. This will allow the public and applicants to clearly see how applications for an encroachment licence or lease or for buying the legal road are evaluated.

5 APPLICATION OF POLICY

This Policy applies to all legal roads within Wellington City except for legal road within areas zoned as **rural** in the Wellington City District Plan. It is specifically designed to cover requests to place structures on, over or under legal road that is adjoining or in the vicinity of an applicant's property.

The Policy does not apply to utility companies because they have specific statutory rights to allow them to utilise legal road to provide various utility services. Neither does it cover activities on the footpath or actual road. The Footpath Management Policy provides a framework on the best use of footpath areas for retail activities, while acknowledging that the footpaths are public open space with their primary purpose being for pedestrians to walk on. The Roading, Traffic and Transportation Unit within the City Council manages the road network, including footpaths.

Deleted: (adopted by the Council in 1995)

Verandas that are specifically designed and used to provide cover for pedestrians are covered by District Plan requirements and are not covered by this Policy.

This Policy applies to existing and proposed buildings.

Deleted: It comes into effect on 1 November 2004.

When is a road encroachment licence or lease needed?

Any property owner seeking to occupy or use legal road for exclusive private purposes may apply to the Council to either:

- obtain a road encroachment licence (refer Appendix 1)
- obtain an airspace or subsoil encroachment lease (refer Appendix 1)
- purchase the legal road (refer section 7 and Appendix 2).

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. It also applies to the use of airspace above legal road for eaves, balconies or similar structures and the use of subsoil for private purposes. Access structures such as stair constructions that do not follow the contour of the land, cable cars and retaining walls require a licence.

The option of a lease is available for airspace and subsoil encroachments only. This is because these types of encroachments have traditionally been allowed to be for long term use and to be practically and administratively difficult to remove. The lease will provide property owners with greater certainty about the continuity of the encroachment for a specified period of time. This is important as these encroachments are often over formed legal road which cannot be sold.

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 required to apply to the Council for landowner consent and any necessary regulatory consents, for example, vehicular access consent
- maintaining unformed areas of legal road i.e. road reserve as residents are encouraged to maintain and beautify these areas in their streets. However,

residents should refer to the Council's Tree Maintenance and Road Reserves Policies and should take advantage of the Council's services - selective vegetation removal and pruning, growth cutting on banks, free plants, weed spraying and noxious weed control. These areas cannot have structures, for example fences put on them or features that may reasonably be interpreted as restricting public access.

5.1 Use of legal road

Before placing any structure on legal road or retaining or excavating any part of legal road, the following are required:

- any necessary regulatory consents, for example, resource or building consents, which can be obtained from the Council's Urban Strategy Unit and Building Consent and Licensing Unit (BCLS)
- landowner consent which can be obtained from the Council's Property Unit
- if appropriate, a road encroachment licence or lease to occupy legal road which can be obtained from the Council's Property Unit.

Who can apply?

Any property owner who has legal road adjoining their property may apply for a road encroachment licence. In some cases it is possible to apply to have an encroachment on legal road that is not adjoining but is in the vicinity of their property. Usually, as part of the application process, consultation will take place with the neighbours and affected parties as deemed appropriate by the Council. However, written consent is required from any affected property owners where a proposed encroachment is partially or fully on that property owner's legal road frontage.

5.2 Residential use of legal road

The majority of road encroachment licences issued by the Council are for residential properties and apply to the placement of structures on unformed road (road reserve) for parking purposes. These benefit both the property owner and the public as they facilitate off-street parking that make Wellington's often narrow roads safer and easier to drive along. However, road encroachment licences are also issued for fenced land encroachments and for historical reasons.

For the purposes of this Policy, government organisations, universities, schools, churches, charitable and non-profit organisations are treated as residential users of legal road. This decision was made to keep the encroachment system simple, clear and fair given the organisations referred to are not rated per se and have a special rating status.

Criteria for allowing road encroachments

In considering any new application for a road encroachment, the Council must be satisfied that the private use of the legal road will not unduly compromise the primary use of the legal road. This use is to facilitate free pedestrian and traffic movement and access to private property. In addition, the encroachment must not:

- damage or remove any significant trees and vegetation or cause any significant damage to the habitat of indigenous species

- compromise any significant public or private views in addition to those protected in the District Plan
- reasonably be able to be located on private land
- significantly compromise the amenity of the area which includes the visual, environmental and heritage values
- compromise the safety of the area
- be for any purpose where the use may be long-term and likely to be practically or administratively difficult to remove.

The Council will also take into account whether the proposed encroachment:

- enhances the social, cultural, visual, entertainment or environmental vitality of the city
- is likely to have to be removed in the foreseeable future.

Terms and conditions of licence

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, the road stopping process may be more appropriate. When a property is sold the encroachment structure is deemed to be sold and the new property owner becomes fully responsible for the maintenance of the encroachment. An encroachment licence will be issued to the new owner when the Council is notified about the ownership change, if there are no issues with the encroachment. This means the:

- structure should be in good repair
- fees should have been paid
- selling owner must not be in breach of the terms of the licence
- licence does not have any special conditions, for example, special termination clauses.

In addition, any encroachment licence 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.

Should an encroachment licence holder want to change the use or the structure of their encroachment they must apply to the Council for written consent.

5.3 Commercial use of legal road

The Council does not permit encroachments at ground level for any purpose where the use may be long-term and the structure is likely to be practically or administratively difficult to remove. Therefore only a limited number of commercial encroachments exist. These are usually for parking and signage.

Deleted: The Council will honour existing residential encroachment leases existing at 1 November 2004 until they expire or until there is a new property owner, whichever comes first. The leases will be replaced with an encroachment licence.¶

Criteria for allowing road encroachments

The criteria for assessing applications for commercial encroachments onto legal road are the same as those for residential encroachments in section 5.2.

Terms and conditions of licence

The terms and conditions for commercial encroachment licences are the same as those for residential encroachment licences in section 5.2 with the exception of the rental which is covered in section 5.8.

5.4 Commercial and residential use of airspace

Airspace encroachments occur when a building has a structure, such as a balcony, 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.

The trend towards downtown living means the number of airspace encroachments in the central city is increasing. They are usually for the addition of balconies or conservatories on existing buildings that have been refurbished as apartments. The airspace encroachments are used to provide indoor/outdoor living, additional floor space and for amenity purposes. Balconies and similar structures can be decorative, break up bare building frontages and, in some instances, reduce wind tunnel effects. They may also contribute to the city by creating a very 'lived in' feel and a sense of safety.

Criteria for assessing applications

The terms and conditions for assessing an airspace encroachment are largely the same as for residential encroachments in section 5.2. The exception is that airspace encroachment licences *can* be issued for any purpose where the use may be long-term and likely to be practically or administratively difficult to remove. However, the encroachment must not be:

- for kitchen or bathroom use
- more than 25 percent of the room it is part of
- instrumental to the functioning of the apartment or building it is attached to i.e. if the encroachment was to be removed the room must still function for its intended purpose.

The provisions of the Central Area Design Guide and those of the Central City Urban Design Strategy, which is currently being developed, will be considered for inner-city encroachment proposals.

Terms and conditions of licence or lease

The Council permits more permanent i.e. difficult to remove encroachment structures into airspace above the legal road. Given the structures' permanency, applicants for airspace encroachments may wish to apply for a fixed-term lease instead of the usual encroachment licence.

The terms and conditions of an airspace encroachment licence are the same as for residential and commercial encroachments under sections 5.2 and 5.3 except that:

- proof of public liability insurance to the value of \$100,000 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

Deleted: The Council will honour all commercial encroachment leases and licence arrangements with one-off payments existing at 1 November 2004 until they expire or there is a new property owner, whichever comes first.¶

- where there are several separate airspace encroachments above each other on a building with the same owner, for example several balconies and eaves, the rental will be assessed on the cumulative encroachment area.

The terms and conditions for the lease are similar to those of an airspace encroachment licence with the key differences being that it will:

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

Deleted: which is deemed to be 66 years for depreciation purposes

5.5 Commercial and residential use of subsoil

There are a limited number of subsoil encroachments in Wellington City. In some cases subsoil encroachments may be required to strengthen the foundations on a building to ensure it has a safe structure. Property owners may also want to use the subsoil below the legal road for other activities such as underground parking or the placement of a tank.

Criteria for assessing applications

In considering any new application for a subsoil encroachment the Council must be satisfied that the private use of the legal road will not unduly compromise the primary use of the legal road. This use is to facilitate free pedestrian and traffic movement and access to private property. Subsoil encroachment licences can be issued for any purpose where the use may be long-term and likely to be practically or administratively difficult to remove. However, the encroachment must not:

- damage or remove any significant trees or cause any significant damage to the habitat of indigenous species
- reasonably be able to be located on private land
- significantly compromise the amenity of the area, which includes the environmental values
- compromise the safety of the area
- impact on the environment in a detrimental manner.

The Council will also take into account whether the proposed encroachment:

- enhances the social, cultural, visual, entertainment or environmental vitality of the city
- is likely to have to be removed in the foreseeable future.

Terms and conditions of licence or lease

The terms and conditions for a subsoil licence or lease are the same as those for a residential licence (section 5.2) or an airspace encroachment lease (section 5.4).

5.6 Encroachments onto reserve and Town Belt land

Historically, the Council has granted encroachment licences for encroachments that were located partially on legal road and on land held under the Reserves Act or Town Belt land.

The adoption of reserve asset management plans and policies has reinforced the special status of these lands. In particular, the Town Belt has regained its special status and protection is being more rigorously enforced. Where private occupation of legal road is sought and the **adjacent land** is held under the Reserves Act or subject to the Town Belt Deed, the provisions of the Reserves Act, any Reserve Management Plan, like the South Coast Management Plan or the Town Belt Management Plan, will also apply to the legal road.

This means that applications for any encroachments onto Town Belt or onto road reserve that is adjacent to Town Belt will not be permitted. Those encroachments that are proposed to be onto or adjacent to other reserve lands will be considered under the relevant reserves management plans, policies and Acts.

In cases where there are existing encroachment licences, these will be amended at the next required issuing of the encroachment licence (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 encroachment structure will have to be removed from the reserve or Town Belt land. In cases where this would render the encroachment unusable, the whole encroachment will have to be removed.

5.7 Fees

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

Residential annual rental fees will be adjusted on a yearly basis according to Consumer Price Index changes. If there has been no upward movement in the CPI, no change will be made to the annual rental fee.

Deleted: They will be reviewed every three years and will require a Council resolution to adopt them after the public have been consulted on any proposed changes.

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

- A *land owner consent application fee* which is payable to the Council for the purpose of assessing an encroachment and, where appropriate, 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 encroachment that is unlicensed.
- An *encroachment administration fee* which is charged for any change to existing licences or leases. This applies to any change of licence or leaseholder, use of the road encroachment or the size of the road encroachment.
- An *annual rental* for the use of the legal road. A flat rate is chargeable on the residential road encroachments and a market rental will be charged for commercial road encroachments.

Deleted: assessment

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 fees associated with the valuation will be paid by the licence applicant/holder.

Information about the actual fee and rental charges may be obtained by contacting the Encroachments and Road Stopping Team on 499 4444.

Annual road encroachment rental

When does it apply?

The annual rental applies in all cases where people establish enclosed areas of garden that encroach on legal road and are greater than 50 square metres or where the encroachment has structures, such as parking structures, houses, decks or balconies. There is a minimum annual charge.

When doesn't it 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 such as driveway, deck, bridge, cable car or retaining wall that is located over steep land provides the **only access to private property**.

Table 1 outlines when assessment, administration fees and annual rentals are payable.

Fee waivers for safety reasons

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 public 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.

Table 1: When is a fee or rental payable?

TYPE OF ENCROACHMENT	SIZE OF ENCROACHMENT	
	50m2 or less	Greater than 50m2
Unrestricted public access with no structures on the encroachment.	No licence required No rental payable	
Restricted public access due to planting, fences and hedges, etc but no structures are built on the encroachment.	Landowner consent and licence required <u>Application</u> fee or administration fee payable No annual rental payable	Landowner consent and licence required <u>Application</u> fee or administration fee payable Annual rental payable <u>Minimum annual rental applies</u>
Encroachment with access structures such as steps, driveways, decks or bridges; <u>cable cars and retaining walls</u> .	Landowner consent required <u>Application fee or administration fee payable</u> No annual rental payable	
Encroachment with structures such as parking structures, house, decks, balconies, etc.	Landowner consents and licence or lease required <u>Application</u> fee or administration fee payable Annual rental payable Minimum annual rental applies.	Landowner consents and licence or lease required <u>Application</u> fee or administration fee payable Annual rental payable

Deleted: Assessment
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Deleted: that follow the contour of the land.

Deleted: Encroachments with access structures such as stairs that do not follow the contour of the land, cable cars and retaining walls [1]

Deleted: Assessment
Deleted: Assessment

Deleted: if area is less than 3.5 m2

6 COMPLIANCE AND MONITORING

The Council regularly discovers structures on legal road that were built without obtaining land owner consent 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 land owner consent or an encroachment licence or lease is a breach of the Wellington Consolidated Bylaw 1991 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 will 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 the amenity or environmental values.

The sale of legal road for private use is a legal process which is outlined in Appendix 2. It is subject to statutory and planning requirements and requires the section of road to be legally 'stopped'³. The process under the Tenth Schedule of the Local Government Act 1974 can involve appeals to the Environment Court.

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. Most of the costs associated with road stopping and the amalgamation with the existing title have to be met by the purchaser.

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.

In cases where airspace or subsoil encroachments occur above or below formed legal road the sale of airspace or subsoil, without the associated surface of the legal road, is usually considered inappropriate. Consequently, airspace and subsoil encroachment leases have been introduced to provide the property owners with greater certainty about the continuity of the encroachment licence. This allows Council to retain the airspace or subsoil if the building is demolished.

Further information

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

³ Changing the designation from legal road to free hold land.

APPENDIX 1

APPLICATION PROCESS FOR LAND OWNER CONSENT AND AN ENCROACHMENT LICENCE OR LEASE

The application process for land owner consent and a road encroachment licence or lease is as follows:

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

The issuing of a new licence or lease process for a current encroachment is as follows:

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.

APPENDIX 2

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.

Road stopping process – a quick summary

1. 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 own discretion, consult with other affected parties.

2. 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.
3. 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.
4. 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.

Sale of redesignated legal road

1. A valuation of the land will be arranged on the basis that the additional land will add value to the Proponent'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.
2. Settlement and transfer costs of the stopped road. The legal costs incurred by the Council are the Proponent's responsibility.

Encroachments with access structures such as stairs that do not follow the contour of the land, cable cars and retaining walls

Landowner consents and licence required

Assessment fee or administration fee payable

No annual rental payable