



GREAT LAKE TAUPŌ  
Taupō District Council

# Road Encroachment Policy

## 2019



# ROAD ENCROACHMENT POLICY

## Purpose

The purpose of this policy is to provide a framework for consistent decision-making in respect of structures, plantings and obstructions under, on or above legal road in the Taupo District.

## Definitions

**Footpath** is the part of any legal road or public place that is laid out for pedestrian use.

**Public Place** is any place under Council control and open to or used by the public as of right.

**Road** has the same definition as section 315 of the Local Government Act 1974.

**Veranda** is a roofed space extending from a building and includes any structure, machinery or equipment erected on, or attached to the side or underside of, a veranda.

## What this policy covers

This policy covers all structures, plantings and obstructions on roads within the Taupo District.

This policy does not 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.

## In what circumstances may encroachments on roads be approved?

Any person who seeks to erect structures, or otherwise do something that may obstruct any road may apply to the Council as landowner of the road for permission. Approval may be given in the following circumstances:

1. Written approval is required if there are structures that will be installed in, or on, the road reserve; or if there will be any form of public access restriction associated with the road encroachment.
2. A lease is required for structures that are erected in the airspace above the road, such as decks and building facades. This is with the exception of verandas which are not required to obtain the written approval from Council. However, the building owner who wishes to erect a building veranda must ensure that they have met the requirements of the District Plan and that they have obtained the necessary building consents.
3. A license to occupy is required for structures temporarily located on the road (for example, seats and tables for outdoor dining).

A list of common road encroachments is included in Appendix 1.

## Policy Principles

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

1. Encroachments should not interfere with the public right to pass and repass on the road.
2. Encroachments should not interfere with any reasonably foreseeable future public uses of the particular road and where possible should also be removable.
3. People who are affected by a proposed encroachment should be consulted and their views considered when decisions are made.
4. Encroachments allowed in the district's town centres should contribute to economic development and encourage public use.
5. Ensure that the health and safety of members of the public is protected.

6. The 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.
7. There should not be ongoing costs to Council as a result of an encroachment.
8. The extent to which the encroachments will resolve significant community issues . They will not be allowed in circumstances where they have been proposed to resolve a neighbour or civil dispute.

### **Consultation with affected parties**

Council needs to be able to understand and assess the effects a proposed encroachment could have on the public right of access and on other property owners. Council may therefore wish to consult the public and to ascertain 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:

- The encroachment may affect the public right of access along the road
- 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.

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.

### **Terms and conditions of encroachment agreements**

Terms and conditions of encroachment agreements are included in Appendix 2.

### **Compliance and monitoring**

Erecting a structure on legal road (including unformed road) without Council approval is a contravention of s 57 of the Local Government Act 1974 and breach of the Reserves and Public Places Bylaw 2016 and can lead to prosecution.

## Appendix 1

Common types of road encroachment covered by this policy:

1. Airspace encroachment: when a structure above the road reserve such as a deck or a building façade occupies the airspace above a road (including footpath). It includes verandas over footpaths which provide shelter to pedestrians.
2. Amenity walls: walls advertising the name of a subdivision or development.
3. Bollards: structures installed to prevent vehicles driving on the berm.
4. Grazing of berms in rural areas.
5. Occupation of footpaths for seating by hospitality outlets.
6. Property fences built on urban road reserve.
7. Retaining walls encroaching on the road reserve.
8. Stock underpasses.

Types of road reserve encroachments not covered by this policy:

1. Planting of trees and vegetation in urban berms because this is covered by the Tree and Vegetation Policy.
2. Shelter belts in the rural area because this is already covered by Rule 4b.1.6 of the Operative District Plan.

## Appendix 2

Included below is a non-exhaustive list of the terms and conditions that may apply to encroachment agreements:

1. The ability of members of the public to have right of access should be key.
2. In most instances, the encroachment agreement will include a standard clause that agreement that acknowledges the Network Utility Operators rights at law to maintain services in, along or under the road and that these rights take precedence.
3. An encroachment agreement may be revoked by Council by notice to the holder of the encroachment agreement. The notice period will be determined when preparing the agreement and will take into account the type of encroachment.
4. Any costs associated with installing the encroachment is at the cost of the property owner.
5. Any encroachment agreement 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.
6. Whether agreement needs to be made with the new property owner if there is a change in ownership.
7. Other special conditions may be applied to a licence on a case-by case basis.

Conditions relating to specific types of road encroachments

Encroachment Type	Specific conditions
<b>Airspace encroachment</b>	<p>Any veranda or other encroachment constructed over a public place shall be maintained in a waterproof condition and in a state of good repair. Good repair includes the absence of: visible rust; holed, rotted or otherwise damaged materials or elements; loose, visible or exposed electrical wires; and/or projections or other features that pose a danger to persons using a public place.</p> <p>Any building owner wishing to construct an airspace encroachment other than a veranda, must apply to Taupo District Council for a lease. Fees for the lease may be charged in accordance with the Council's Fees and Charges schedule.</p>
<b>Amenity walls</b>	<ol style="list-style-type: none"> <li>1. Amenity walls must not be erected in the road reserve.</li> <li>2. If a developer wishes to erect an amenity wall, it must be erected entirely within the adjacent land, which is not owned by Council.</li> </ol>
<b>Bollards</b>	<p>Bollards must be:</p> <ol style="list-style-type: none"> <li>1. Constructed using frangible round treated timber of less than 180mm diameter.</li> <li>2. Placed in the grassed area and set back at least 400mm from the face of the kerb, unless otherwise agreed by Council.</li> <li>3. No higher than 600mm unless otherwise agreed by Council.</li> <li>4. At least 300mm clear of the footpath unless otherwise agreed by Council.</li> <li>5. Maintained in good condition and be painted white at all times.</li> <li>6. Repaired immediately or removed if damaged any associated costs will be at the adjacent property owner's expense.</li> </ol>
<b>Retaining walls encroaching on the road reserve</b>	<p>Retaining walls:</p> <ol style="list-style-type: none"> <li>1. Must be maintained in good condition.</li> <li>2. Must be repaired immediately or removed if damaged and any associated costs will be at the adjacent property owner's expense.</li> </ol>

<b>Encroachment Type</b>	<b>Specific conditions</b>
	The property owner must ensure that they also apply for another other relevant permissions, such as resource consents or building consents.
<b>Property fences built on urban road reserve</b>	<p>Property fences built on the urban road reserve:</p> <ol style="list-style-type: none"> <li>1. Any consents (including, but not limited to building and resource consents) have been applied for and these consents have been granted.</li> <li>2. The fence/s must be maintained in good condition.</li> <li>3. The fence/s must be repaired immediately or removed if damaged and any associated costs will be at the adjacent property owner's expense.</li> <li>4. Where a fence has been erected without prior approval Council, Council will have the ability to ask the property owner/s to remove the fence/s.</li> </ol>
<b>Fences erected on rural road reserve for the purposes of stock grazing</b>	<p>Fences built in the rural road reserve:</p> <ol style="list-style-type: none"> <li>1. Fences are easily removable and are moved within one month, if requested by Council.</li> <li>2. Fences are maintained in good condition and immediately or removed if damaged any associated costs.</li> <li>3. The fences are installed in appropriate locations that are agreed to by Council.</li> </ol>
<b>Stock underpasses</b>	If a subdivision results in different ownership on both parcels of land at each end of the underpass, then Council will require an easement or encroachment license to be granted and for both holders to be liable.