Road Surface, Airspace and Subsoil Encroachment

AT Property: Road Surface, Airspace and Subsoil Encroachment Guideline
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1.0 Guideline Statement

The Road Surface, Subsoil and Airspace Encroachment Guideline governs the private use of structures on, over or under a legal road and is intended to regulate the management of the use of legal road for private purposes. The guideline has the following five principles:

- **Protection of rights** – The public has unimpeded access to legal road for free pedestrian and traffic movement.
- **Protection of community amenity** – The road corridor contributes to streetscape value, environmental and ecological purposes.
- **Public and private benefit** – Unformed legal road can have significant public benefit by providing space for utilities and adding amenity value.
- **Disposal of assets** – Subject to statutory obligations, Auckland topography and legal road layout means that some parts of the legal road may never be required for council business.
- **Transparency** – The public have visibility of how road surface, subsoil and airspace lease applications are evaluated.

Private use of legal road (solely for private benefit) will not be permitted unless there are exceptional circumstances and/or there is an element of public benefit. Any encroachment onto the road surface, subsoil or airspace of a legal road must be authorised by Auckland Transport (AT) and can only remain in place with AT’s agreement.

Historic encroachments on, over or under a legal road will be treated on a case by case basis.

This guideline applies to structures encroaching the road including:

Structures on the road (see Section 12 [Appendix 2] for severity scale and photographic examples) including, but not limited to:

- Letterboxes, plantings, fencing, hedges
- Retaining walls, safety rails, barriers, trees
- Parking pads, carports, garages, sheds, other buildings
- Any other structure that is privately owned

The encroachment of structures into subsoil below roads, including:

- Subsoil encroachments such as foundation pads, wall beams or piles at least 2 m below the road surface.

The encroachment of structures into airspace above roads, including:

- Verandas in business areas,
- Overbuilding’s which make use of the airspace of a road for architectural features including balconies, oriel windows, egress facilities and building service plant,
- Overbuilding’s which make use of the airspace of a road for increasing floor area,
- Overbuilding’s which make use of the airspace of a road for a pedestrian and/or vehicular air bridge,

The following items are specifically excluded from consideration under this guideline for leasing of subsoil below roads. These items are subject to a specific Auckland Transport approval:

- Leases for underpasses,
• Leases for pedestrian walls,
• Leases for occupied space,
• Construction of cellars or excavation in the vicinity of a road.

2.0 Background

The Auckland region includes both urban and rural areas as well as the Gulf Islands.

AT administers more than 7000 kilometres of legal road around the region and Hauraki Gulf Islands, which is made up of unformed road (road corridor), footpaths, access ways and actual formed roads, which is a substantial investment by ratepayers.

The public use and enjoyment of legal road can be hindered where private residents or commercial enterprises capture this public land for their own use either by placing structures and other obstacles on, above or below the legal road. This private use of legal road is known as an encroachment of the road surface, subsoil or airspace.

Auckland Transport’s guideline is that legal road should remain as open public space whether or not it is a formed road or footpath. An open uncluttered road corridor is an important environmental asset that should be safe for the public to enjoy. In general, excluding use of legal road (see definition) will not be permitted by AT, other than permits issued for construction/maintenance or through temporary road closures for public events. Within the Auckland region there are a number of unformed or “paper” roads that provide no public benefit. The status of these roads will be reviewed by AT over time and those not required may be “stopped” and disposed of either to Council or adjacent landowners as appropriate.

Placement of café furniture on footpaths is addressed under the Street Trading Bylaw which is administered by Auckland Council on behalf of Auckland Transport.

Use of unformed (paper) roads is being addressed by a separate policy which is currently under development by Corridor Operations.

Occasionally AT (in compliance with this guideline) may allow surface, airspace or subsoil encroachment to occur, in which case an encroachment lease/licence will be approved by AT Property under delegated authority. Any approved encroachment on, above or below a legal road will be recorded against the adjacent property file and disclosed to prospective property purchasers via the LIM and PIM process.

This guideline covers the regulation and management of the private use of the road surface, subsoil and airspace.

3.0 Purpose and Objectives

This document provides the tools for consistent decision making to control encroachments on, above and below legal roads in the Auckland Council area. It will assist AT to act in a consistent way when granting landowner consent and issuing surface, airspace or subsoil leases/licences. It will enable AT to meet its legal responsibilities with regard to the use of the road surface, airspace or subsoil of a legal road. The Guideline will facilitate:

• safety for pedestrians, vehicles and cyclists
• the maintenance of an uncluttered streetscape
• the provisions of clear corridors in the berm for installation and maintenance of underground services
the preservation of public access options along the road corridor
provisions of access to private land
protection of public assets
manage equitable use for private benefit by ensuring that private benefit is compensated for by some corresponding public good
the transfer of knowledge to the public so they have a clear understanding of the guideline

4.0 Statutory Provisions

Auckland Transport under powers set down in the Local Government (Auckland Council) Act 2009 is empowered under section 357 of the Local Government Act 1974 (LGA 74) to authorise any encroachment on, above or below an area of road owned by Council and managed and controlled by Auckland Transport.

- Section 341(1) of the Local Government Act 1974 requires that sufficient airspace remains above the surface of the road for the free and unobstructed passage of vehicles and pedestrians lawfully using the road.
- Section 341(2) of the Local Government Act 1974 provides that Council may grant a lease for any improvements erected or constructed in the airspace or subsoil of roads.
- Section 341 (3) of the Local Government Act 1974 provides that Council may permit the temporary occupation of any part of the surface of legal road or airspace above the legal road.
- Section 334 (1) of the Local Government Act 1974 provides for facilities under and over the road for the health, safety or convenience of the public.
- Section 338 (1) of the Local Government Act 1974 provides that Council may grant a lease for the laying of conduit pipes under or along any road.

Accordingly, section 357(1) of the LGA 1974 enables the authorisation of encroachments on, over or under the road and the right to grant a lease/licence for the space occupied by the encroaching structures.

To aid the decision-making about encroachments on, over and under a legal road the following principles are applied to all applications for road, subsoil and airspace encroachment.

4.1 Protection of rights

The primary principle is that the public have a right to unimpeded access to legal road (including roads and footpaths) to facilitate free pedestrian and traffic movement, and access to private property. Utility companies also have a statutory right to use legal road, which AT must protect as the supply of the underground utility services benefits everyone in the community. Any damage caused to utilities by surface, airspace or subsoil encroachments must be repaired by the encroacher at their own costs (whether the encroachment has received AT permission or not). Where utility operators damage encroachments, which have not received AT permission, then the utility operator is required to reinstate the berm to the standards identified in the AT Code of Practice.

To obtain permission to occupy the road surface, airspace or subsoil of a legal road, AT must be satisfied that the encroachment will not unduly or unreasonably compromise or interfere with the public use of the legal road, or create a nuisance, either now or in the future. AT also has to ensure that other affected property owners’ rights are not compromised. Under section 357(2) of the Local Government Act 1974, AT may not authorise an encroachment, which might obstruct or
interfere with the statutory rights of utility operators in relation to roads, without their written consent.

4.2 Public and private benefit

There are some occasions where road surface, airspace or subsoil encroachments may have both private and public benefit.

AT will consider granting a road surface, airspace or subsoil encroachment lease/licence where the applicant can show both public and private benefit. Where there is only private benefit, AT will not issue an encroachment lease/licence.

Further, the road surface, airspace or subsoil encroachment shall avoid any loss of amenity or potential amenity, including the planting of trees, as well as pleasantness, coherence and harmony of the street space caused by the proposed structure.

5.0 Guideline Definitions

In terms of this Guideline, the following definitions apply.

**Airspace:** is the area, which commences at the height above the surface of a legal road that will allow the unobstructed passage of vehicles and pedestrians lawfully, using the road.

**Access ways** include driveways, paths, or steps that cross legal road and provide access from the formed legal road to private property. This can included a narrow area of formed or unformed legal road running between two properties to provide public access from one street to another.

**Footpath** is part of any legal road that is laid out or constructed primarily for the use of pedestrians.

**Land owner approval** is Auckland Transports consent as the Road Controlling Authority of the Auckland roading network (which includes legal road), to allow legal road to be used for private or commercial purposes. "**N.B. Any consent granted by Council in its capacity as a regulatory authority does not constitute land owner consent**"

A **Lease** confers a legal or equitable estate in the land. The road surface cannot be leased.

**Legal road** has the same meaning as **road** in the Local Government Act 1974 (Section 315). In short, it covers the total area of land between road boundaries including:

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

A **Licence** is a mere personal permission to enter the land and use it for some purposes which does not confer any estate in the land on the licensee.

**Non-habitable structures** are those structures not authorised for living purposes, including decks or overbuilding’s, and access structures.
An object on legal road includes any kind of physical object, not being a structure, which presents an obstacle or hindrance to the free passage of pedestrians and vehicles.

Overbuilding means any structure which extends into the airspace over a road and includes balconies.

Private benefit occurs when the use of the surface, subsoil or airspace particularly benefits an identifiable person, organization, landowner or occupier, rather than the public generally, for example the owner of a balcony or verandah encroaching on a road.

Public benefit occurs when the use of the surface, subsoil or airspace benefits the public generally.

A subsoil or airspace lease is a property right to authorise the exclusive occupation of an area such as airspace or subsoil but not the road surface. AT cannot issue a lease on road surface unless it carries out a road stopping and creates a fee simple area of land, it can however grant a surface licence.

Road Encroachment occurs where:

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

A road encroachment licence authorises a right to occupy an area of legal road. However, it does not give the licence holder exclusive possession in the way that a lease would. A licence can be revoked on one month’s notice or such other terms determined by Transport. It does not provide an interest in the land. A licence can include a condition that public access must be maintained at all time.

A road stopping occurs where the status of a legal road is changed into freehold land and is used in situations where it is clear that the legal road is surplus to Transports requirements. This change enables Transport to dispose of the land.

A structure on, above or below a legal road includes any kind of physical construction or addition such as:

- Parking structures, for example garages, car pads, car decks, car ports
- Access structures, for example retaining walls to support a driveway, gates, covered access ways, steps, ramps.
- Houses/building, for example any part of a primary or secondary building or dwelling, eaves, porches, decks, balconies, conservatories.
- Boundary markings, for example, fences, walls, hedges.
- Verandahs or any structures suspended or cantilevered from buildings generally built on boundaries and include canopies, sun blinds and awnings.
- Architectural features, foundation pads, wall beams or piles.

Subsoil means the area beneath the surface of a legal road.

Temporary road closures occur when a portion of road is temporarily closed for example to accommodate a parade or sporting events such as cycling or running race or road works. These closures are managed by Road Corridor Access Events Co-ordinator and are not affected by this guideline.

Unformed road is any unoccupied and undeveloped space that forms part of the legal road. It is commonly called “paper road” or “road corridor”.

Subsoil means the area beneath the surface of a legal road.
Utility Service providers, these include any utility service providers that are legally entitled to use and occupy the subsoil or airspace for the installation of utility services such as gas, water, power, traffic control, telecommunications, wastewater, storm-water etc. The utility service providers can either be publicly or privately owned.

Verandah is a roofed opened gallery or porch. It is also described as an open pillared gallery, generally roofed, and built around a central structure.

6.0 Guideline

6.1 Structures Encroaching on Airspace of Roads

6.1.1 Verandahs in business areas

Scope
Verandas (which include canopies, sun blinds and awnings) are usually provided by building owners to provide protection and comfort to pedestrians in adverse weather conditions. Verandas are also present in strip shopping precincts in many suburban locations and this guideline will continue to permit their replacement and the construction of new verandas in new developments where appropriate.

Guideline Details
It is vital that the presence of verandas does not affect road users, particularly drivers of motor vehicles. It is also equally important that these structures be permitted in locations where accidental damage by motor vehicles is unlikely, and for these reasons the following will apply:

a) A verandah would normally be erected at a height of not less than 3m above the level of the footpath, creating a sufficient and comfortable environment for pedestrians, and taking into consideration the maintenance of significant streetscapes. It must extend from the supporting building to a distance no closer than 700 millimetres or in the case of a bus stop, no closer than 1000 millimetres inside a vertical line drawn from the face of the kerb to minimise the risk of the structure being damaged by larger motor vehicles (buses or trucks) travelling close to the kerb. Exceptions to the above will be considered on a case by case basis.

b) A minimum lighting level of 10 lux under the verandah will be required to provide a level of safety to pedestrians during the hours of darkness. The lighting must be installed, maintained and power supplied at the expense of the owner.

For consistency of verandah design it is important that existing design requirements be preserved. The design requirements are addressed in the Unitary Plan and the legacy Council District plans until the Unitary Plan becomes operational.

6.1.2 Use of the airspace over roads for architectural features on buildings including balconies, oriel windows insulation skins, egress facilities and building service plants.

Scope
Previous bylaws and building standards permitted the use of airspace over roads for architectural features as above. A minor intrusion into the airspace of roads for these features may not have significant implications for road users, but any intrusions should require the input of the Council's Built Environment Team and/or Urban Design Panel, or other formally recognised advisory design panels or committees.
This guideline will permit minor intrusions into the airspace of roads to create some flexibility for building designs, the placement of building plants and services attached to buildings, for structural strengthening of buildings, recladding of buildings or any other minor modifications of buildings.

**Guideline Details**

Airspace over roads is generally available for adjacent properties for the above mentioned features. The design of architectural features must ensure that:

i. Any encroachment must not interfere with or in any way obstruct the right of the Crown, or any authorised person to run utility services along the road as set out in Section 357(2) of the Local Government Act.

ii. Any encroachment must comply with the Unitary Plan and be subject to all necessary regulatory approvals.

6.1.3 Use of airspace over roads for increasing the floor area of a building

**Scope**

AT will not generally grant rights to airspace above roads for the sole purpose of creating additional floor space unless the public benefits of doing so are clearly demonstrated. When considering a request to grant rights to use airspace over a road for this purpose, the AT must be satisfied that the guideline details are met.

**Guideline Details**

a) The proposed overbuilding must:

   i. Act as a landmark.
   
   ii. Provide an additional public viewing point or observation deck.
   
   iii. Provide an opportunity for an architectural statement.

b) An application under this section of the guideline will be considered in the following circumstances:

   i. Where the design and location of the structure will not cause excessive shading at road level, or block light to and views from, adjoining buildings.
   
   ii. If there are already overbuilding’s close by, building further structures will not have an adverse cumulative effect.

c) The terms and conditions for using overbuilding’s for increasing floor area will be negotiated by AT Property. The terms and conditions may include (without limitation):

   i. The use to which the structure can be put,
   
   ii. Design requirements which must be to the AT’s satisfaction, and
   
   iii. The ability for the overbuilding to be removed if required.

6.1.4 Use of the airspace over roads for a pedestrian and/or vehicular air bridge.

**Scope**
AT will consider granting rights to airspace above roads for the sole purpose of creating air bridges in compliance with this guideline, where public benefit is clearly demonstrated. When considering a request to grants rights to use air space over a road for this purpose, AT must be satisfied that the guideline details have been met.

**Guideline Details**

1. Any proposal will need to meet a significant number of the following conditions or results:
   a. There are high levels of pedestrian traffic in the vicinity, some of which would be usefully diverted to an elevated walkway, without reducing the amount of pedestrian activity on the road to a level which detrimentally affects the vitality of existing activities on the road.
   b. A more direct link or a choice of routes between public buildings or places of interest will be created.
   c. The new structure will act as a landmark.
   d. The new structure will provide an additional public viewing point.
   e. The new structure will provide an opportunity for an architectural statement.
   f. The new structure will improve pedestrian safety by providing an alternative crossing point (to avoid a high speed or heavily trafficked roadway).

2. An application under this section of the guideline will be considered in the following circumstances:
   a. Where the design and location of the structure will not cause excessive shading at road level, obstruction of footpaths or block light to and views from adjoining buildings.
   b. Where joining buildings across the road will not result in excessively bulky built form.
   c. Where the structure can be joined to the host building/s in an architecturally sympathetic way.
   d. If there are already other air bridges or overbuilding’s close by, building further structures will not have an adverse cumulative effect.
   e. Where the alignment and location of the structure will not detract from views nor compromise the basic grid layout and urban form of the town centre and the general openness of the road system.
   f. Vertical clearance should be not less than 6.5 metres.

3. The terms and conditions for a lease to occupy airspace will be negotiated by AT Property. The terms and conditions may include (without limitation):
   a. The use to which the structure can be put,
   b. The financial considerations associated with the encroachment,
   c. Design requirements which must be to the AT’s satisfaction, and
   d. The ability/ease of removal of the air bridge.

**6.2 Structures Encroaching on Subsoil of Roads**
Scope

AT will not generally grant rights/lease to the subsoil below roads for the use of private developers. Any applications for the lease of subsoil below roads would be considered on an exception basis providing that the AT is satisfied that the guideline details have been met.

Guideline Details

In consideration of any application to lease subsoil below roads the following factors must be assessed to ensure that the public interest is protected:

1. To maintain public access provided by the road space.
2. To ensure the integrity of the road assets is not compromised.
3. To ensure that the safe and efficient functioning of the road for the movement of pedestrians and vehicles is not compromised in any way by building encroachment.
4. To avoid any loss of amenity or potential amenity, including the planting of trees, as well as pleasantness, coherence and harmony of the street space caused by building encroachment.
5. Encroachment of building into subsoil below roads generally should be limited to: foundation pads, wall beams or piles at least 2m below the road surface. In addition:
   a. Any encroachment must ensure that at least 2m subsoil space remains below the surface of the road for the free and unobstructed passage of underground services lawfully laid in the road.
   b. Any encroachment must not interfere with or in any way obstruct the right of the Crown, or any authorised person to run utility services along the road as set out in Section 357(2) of the Local Government Act.
   c. Any encroachment must comply with the relevant District Plan and be subject to necessary regulatory approvals.
   d. Council or other Network Utilities who have rights to lay services in the road must have no immediate or foreseeable use for the subsoil space.
6. Encroachment of structures into subsoil below roads other than those set out in 5. above would require additional specific approval of AT.
7. Any additional financial implications for AT.

6.3 Structures Encroaching on Surface of Roads

Scope

AT will consider granting rights/lease to the legal road in accordance with this guideline, where public benefits are clearly demonstrated. Applications for a road encroachment licence will be considered if AT is satisfied that the guideline details have been met.

Guideline Details

AT will consider issuing a road encroachment licence where the encroachment is for the purpose of improving public safety (or removing/reducing a hazard) i.e. car parking pad to remove vehicles off narrow roads.

In consideration of any application to licence structures on road surfaces the following factors must be assessed to ensure that the public interest is protected:
1. To maintain public benefits provided by the road space.

2. To ensure landowners frontages right are protected.

3. To ensure the public’s common law right of unimpeded movement and access to property is maintained.

4. To ensure that the safe and efficient functioning of the road for the movement of pedestrians and vehicles is not compromised in any way by building encroachment.

5. To avoid any loss of amenity or potential amenity, including the planting of trees, as well as pleasantness, coherence and harmony of the street space caused by surface encroachments.

6. To ensure the integrity of public assets in the road.

AT will generally not consider road encroachments where:

- private individuals wish to plant trees on the berm (due to the requirements for sight lines, traffic and pedestrian safety and the interference with existing utility services both above and below ground), and

- Structures are to be located at ground level on legal road for any purpose involving the commercial use of public land.

### 7.0 Application and Approval Process for Surface, Airspace and Subsoil Encroachment Leases and Licences

This guideline applies to all legal roads within the Auckland region and the Hauraki Gulf Islands. It is specifically designed to cover requests for placement of structures on, under or above a legal road that are adjoining or in the vicinity of an applicant’s property.

The application process applies equally to licences and leases where:

- A road surface encroachment may only be licenced, and

- An airspace or subsoil encroachment may be licensed or leased.

The property owners/developers must make an application to Auckland Transport and have received approval prior to placing any encroachment object on, under or above a legal road.

AT will review existing encroachments and will consider applications for new encroachments on a systematic basis. Examples of encroachments subject to a lease/licence arrangement with AT are shown in Appendix 1 & 2.

#### 7.1 Use of legal road

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

- Landowner consent which can be obtained from AT via AT Property, and then

- Any necessary regulatory consents, for example, resource or building consents, which can be obtained from Auckland Council.

- A Corridor Access Request is required for any excavation within the road corridor (apply on the [www.beforeudig.co.nz](http://www.beforeudig.co.nz) website).
7.2 Terms of Leases/Licences

The term of the lease should not exceed Twenty (20) years and shall include a condition allowing AT to terminate the lease and require removal of the foundations or structure if required for public purposes, upon 6 months’ notice. (any exceptions to the 20 year term due to commercial reasons will be viewed on a case by case basis as required if specific circumstances warrant a longer term). All costs are to be borne by the lease holder.

The term of the licence should not exceed Five (5) years and shall include a condition allowing AT terminating the licence and requiring removal of the foundations or structure if required for public purposes. AT must provide 6 months’ notice of the termination and all costs are to be borne by the licence holder. At the end of the five year licence, the licence may either be renewed or re-considered as a lease (if appropriate)

7.3 Transfer of Leases/Licences.

Licences and leases will not automatically transfer to a new adjoining landowner; they cannot be sold or traded.

Encroachment licences/leases must be signed by all legal owners of the adjoining property. When a property is sold the new adjoining landowners must sign a new licence/lease and accept Transport’s terms and conditions applicable at the time.

A replacement encroachment licence/lease in the new adjoining landowner’s name may be granted when Transport is notified about the change of ownership, if there are no issues with the encroachment, where:

- any structures are in good repair,
- any outstanding fees have been paid in full,
- the selling adjoining owner is not in breach of the terms of the licence/lease, and
- the licence/lease does not have any special conditions e.g. special termination clauses.

7.4 Process for landowner consent and encroachment lease/licence

The application process for landowner consent and a road encroachment licence, or an, airspace or subsoil encroachment lease/licence is provided on the AT website.

8.0 Lease/Licence Fee

This section outlines the fees applicable to surface, airspace and subsoil encroachments (See fee scale in Appendix 3). They will be reviewed every three years on such other commercial terms negotiated that reflect the prevailing market.

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

- A non-refundable application fee which is payable to AT for the purpose of assessing the encroachment and, where appropriate issuing a lease/licence that provides for the private occupation of the surface, airspace or subsoil of legal road, and preparing and registering an
encumbrance (where required). The fee is also payable where AT undertakes an assessment of an existing encroachment that yet to be leased/licenced.

- An **encroachment administration fee** which is charged for any changes to existing leases/licences. This applies to any changes to a lease/licence holder, use of the road encroachment, or the size of the encroachment.

- An **annual lease fee** for the use of the airspace or subsoil.

- For surface an **annual licence fee** at a per square metre rate is chargeable on the rural road encroachments. This is calculated on the adjoining lands rateable land value and divided by the land area to obtain a per square metre rate which is applied to the adjoining encroachment area. A *market rental will be charged for commercial and residential encroachments.

- *The market rental will be determined by an independent valuer appointed by AT. The fee associated with the valuation will be paid by the lease/licence applicant/holder. In the case of airspace and subsoil leases, land value per square metre of the road will be assumed to be the same as the land value per square metre (highest and best use) on each side or an average if two different uses or values.*

**The annual lease fee will be:**

- Either
  - 3% of the freehold land value as annual rental where the encroachment is related to any other purposes except for commercial trading. Provided that if a multi-level encroachment is proposed the rental rate will increase by 1% point for the third and each additional level to a maximum of a 6% rental rate. **Or**
  - 6% of the freehold land value as an annual rental where the encroached land is used for commercial trading.

- Plus an Annual CPI adjustment

**8.1 Fee waiver**

AT retains the discretion to waive the annual fee where an encroachment is created 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 encroachment within the boundary of the adjoining land
- The encroachment is a requirement of the Unitary Plan (such as a verandah)

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

- assist with the AT’s obligations to ensure public safety
- fully address the public safety concerns
- primarily be for the purpose of promoting public safety

Where AT may consider waiving the encroachment fee, the applicant is still required to apply for the encroachment lease/licence to ensure the proposed structure is recorded by AT Property.
Such waivers will be considered under the financial delegations policy.

9.0 Enforcement

Encroaching on the road surface, airspace or subsoil of a legal road without landowner consent or an encroachment lease/licence is in breach of section 357 of the Local Government Act 1974 and can lead to prosecution. Section 357 "states that every person commits an offence who, not being authorised encroaches on a road and is liable for a fee not exceeding $1,000 and, where the offence is a continuing one to a further fine not exceeding $50 for every day the offence continues and may be ordered to pay costs incurred by the council (AT) in removing any such encroachment".

AT would firstly seek to either have the encroachment removed voluntarily or request the encroacher to apply for an encroachment licence, lease or road stopping if applicable before such action would be considered.

10.0 Monitoring and Review

This guideline must be reviewed as part of the three year review cycle.

11.0 Related Policies

The road surface, airspace and subsoil encroachment guideline is related to the AT Principle on vegetation in the road corridor.

12.0 Appendices
Appendix 1

Photographic examples of airspace encroachments are shown below.

*Verandas and Balconies in business areas*

**Architectural features**
A pedestrian and/or vehicular air bridge
Appendix 2

Road Encroachment Severity Scale

These Road Encroachment Severity Scales are used to guide officers in the application of this guideline.

**Category E1 – Negligible – Remove (if a hazard)**
- Normal sized letterboxes, handrails.
- Small scale planting, ground cover, bark, pebbles etc.
- Small shrubs and bushes on very steep banks where walking is not possible.
- Ground cover on steep banks where it is difficult to mow.

These encroachments should not impede pedestrians or present a barrier. Generally, no action will be taken once an existing encroachment has been categorized as E1 Negligible.

**Category E2 – Minor Encroachment – Remove (if a hazard) or stay with conditions**

These are similar to Category E1 encroachments but on a slightly larger scale.
- Low retaining walls, garden borders
- Where pedestrian access still possible through and over planted areas or structures.
- Transverse barriers, fences, hedges etc. preventing movement along the road verge or berm are not considered as E2.
- The encroachment must not restrict visibility for motorists or pedestrians.
- The encroachment must not create a potential roadside hazard e.g. boulders on a berm

A letter may be sent to the property owner informing them that the encroachment may remain subject to conditions. A copy of the letter will be placed on the property file.

**Category E3 – Moderate Encroachments – licence or remove.**
- Large retaining walls, required for the construction of vehicle crossings and driveways.
- Safety rails and fences, barriers where there is a significant difference in ground level that don’t provide public benefit.
- Large landscaped feature gardens on verge/berm area provided they do not block visibility, create potential safety issues or present a hazard along the berm area.

The property owner will be required to apply for a licence or alternatively remove the encroachment.

**Category E4 – Major Encroachments – Remove**
- Large stone walls, hedges, and fences capturing road land for private use and preventing public access to public land.
- Dense trees and shrubs completely covering the berm with the intention of providing privacy screen to the private property.
- *Excavations to form parking areas on berm.*
- Unsuitable planting, including cactus, and other sharp pointed leaf or poisonous varieties. Noxious plants.

The property owner will be asked to remove the encroachment at their own expense or Transport will arrange for the work to be done and will charge the property owner the total costs.

* In cases where parking areas have been created that benefit both the public and vehicle owner by removing a vehicle off a narrow or particularly steep street, consideration to granting an encroachment licence may be given in view of traffic and pedestrian safety or allowing the use to remain but with public rights to use if practical.

**Category E5 – Sell Road Land (subject to statutory requirements)**

- Existing buildings partially on road land and existing road boundaries inconsistent with developed environment.

Transport will consider, subject to the road being declared surplus, stopping portions of legal road and requesting Auckland Council’s consent selling to the landowner to regularise the road boundary. AT will consider whether it would be impractical or unrealistic to request the owner of the encroachment to remove it.

The disposal of the road is subject to statutory requirements, protecting existing utility services, future road upgrading proposals, community views, public objections.

<table>
<thead>
<tr>
<th>Road Encroachment Severity Scale</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>E1 Negligible – Remove</strong></td>
<td>Rocks placed on berm to prevent vehicles parking on it however trees on berm and yellow broken lines prevent parking anyway. Does not impeded views/visibility or pedestrian access.</td>
</tr>
<tr>
<td><strong>E2 Minor Stay + Conditions</strong></td>
<td></td>
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<tr>
<td>--------------------------------</td>
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</tr>
<tr>
<td>Trees and shrubs providing visual buffer between industrial building and footpath. Access or vision not restricted along berm or footpath.</td>
<td><img src="image1.png" alt="Image" /></td>
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<table>
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<tr>
<th><strong>E3 Moderate – Licence + conditions</strong></th>
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</thead>
<tbody>
<tr>
<td>Concrete planters integrated as part of wall protruding onto footpath. Footpath wide enough so pedestrian access is not impeded and no views or visibility lines impeded. Provides pleasant green ascetic look to street.</td>
<td><img src="image2.png" alt="Image" /></td>
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<tr>
<th><strong>E3 Moderate – Licence or remove</strong></th>
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<tr>
<td>Large numerous palms planted on berm along with shrubs. Does not impede pedestrian access along path but does along berm and gives an impression of exclusive use</td>
<td><img src="image3.png" alt="Image" /></td>
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</table>
### E4 Major – Remove

Large hedge and gate giving adjoining landowner exclusive use of public land and excluding public access. Diminished site lines and views for neighbours' vehicles backing out into road.

### E4 Major – Remove

Large block fence with garden giving adjoining landowner exclusive use of public land and excluding public access. Diminished site lines and views for neighbours' vehicles backing out into road.

### E5 – Major – Sell Road

Two storey house is partially encroached over road boundary and cannot be moved back due to steep bank behind house. Road formation is above house and no pedestrian or vehicle access would be restricted if the land was stopped and sold.
Appendix 3

Fee Structure

**Application Fee:** $1,000 (inc GST)

**Encroachment Administration Fees:**
- Change of Licence Holder: $300 (inc GST)
- Change of area or use: $600 (inc GST)

**Annual Licence Fee:**
- **Rural** (a per square metre rate is calculated the rateable land value of the applicants property and divided by their total land area which is then applied to the area of encroachment)
- **Residential** (a current market rental will be determined by an independent registered valuer. The fee associated with the valuation will be paid by the applicant)
- **Commercial** (a current market rental will be determined by an independent registered valuer. The fee associated with the valuation will be paid by the applicant.)

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**Authority and Classification**

<table>
<thead>
<tr>
<th>Owner (contact for updates, clarity etc.)</th>
<th>Wendy O'Neill</th>
<th>Ext: (48) 9595</th>
<th>Email: <a href="mailto:wendy.oneill@aucklandtransport.govt.nz">wendy.oneill@aucklandtransport.govt.nz</a></th>
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<td>Transport Road Corridor Operations, Access, Maintenance, Strategy &amp; Planning, AMP &amp; Policy, AC Planning</td>
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<td>Guideline users</td>
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<td>[date] 13/3/2013</td>
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