



Guidelines for Road Encroachment Licences

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1 Introduction

Auckland Transport (AT) is a council controlled organisation of Auckland Council. It was established to contribute to an efficient, effective and safe Auckland transport system.

AT is responsible for the management of more than 7,000 kilometres of arterial and local road as the road controlling authority for the wider Auckland region.

AT's approval as road controlling authority is required under section 357(1) of the Local Government Act 1974 to encroachments within road it manages. Encroachments are structures or actions which cause an area of road to be used or occupied. For example, buildings, retaining walls and other works. Encroachments can occur on, above and below the road surface. As a road controlling authority, AT is empowered to allow occupation of road and has the discretion to authorise encroachments within road it manages.

The premise of section 357(1) of the Local Government Act 1974 is that encroachments on AT-managed road are not allowed without AT's approval. AT does not encourage encroachments within the road, but in some circumstances may authorise certain encroachments through the grant of an encroachment licence.

2 Purpose

These guidelines describe when an encroachment licence is required and the principles and requirements AT considers when processing an encroachment licence application.

These guidelines provide the framework for AT to deliver consistent decision-making in relation to encroachments and assist AT to meet its legal responsibilities regarding encroachments. The following principles apply:

- **Protection of public rights:** The public has the right to unobstructed access to road for free vehicular and pedestrian passage.
- **Safety:** AT's aim is to provide a safe transport network. Auckland has become a Vision Zero region. Any use of the road must fit with AT's Vision Zero ethics-based transport safety approach and its objectives as outlined in the Vision Zero for Tāmaki Makaurau Transport Safety Strategy and Action Plan to 2030. As a road controlling authority, AT must ensure the safe use of road is not compromised now and in the future. AT strategy is to avoid where possible potential future hazards and reduce new and existing known hazards in the road.
- **Protection of public assets and amenity values:** Road is a valuable public asset and provides significant public benefit by allowing space for current and future utilities and protecting known transport requirements and future planning opportunities. It contributes to streetscape, and environmental and ecological values and provides accessibility.
- **Publicly and privately owned structures:** Privately owned structures (as opposed to publicly owned structures) are unlikely to be granted an encroachment licence unless, at AT's discretion, the public asset and amenity function outlined above and the safety of the road is maintained.

3 Definitions

Access way includes a driveway, path or steps that cross legal road and provide access from formed legal road to private property. This can include a narrow area of formed or unformed legal road running between two properties to provide public access from one street to another



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 legal road

AT means Auckland Transport, a council controlled organisation of Auckland Council, which has full management and control of the Auckland transport system, including legal roads

Encroachment occurs where a structure or an action causes an area of legal road to be used or occupied

Encroachment licence grants a right to occupy an area of legal road. It does not grant exclusive possession or create an interest in land

Footpath is part of a road that is laid out or constructed primarily for the use of pedestrians and includes the edge, kerb and channel

Land owner approval is AT's approval as the road controlling authority

Legal road has the same meaning as **road** in the Local Government Act 1974 (section 315). It covers the total area of land between road boundaries including:

- carriageway (formed road)
- footpath
- berm or verge
- bridge, culvert, drain, ford, gate and building
- cycle way, cycle path and cycle lane
- land that is legal road, but is not physically formed as road in full or in part
- airspace
- subsoil

Structure includes any kind of temporary or permanent physical construction within legal road

Subsoil is the area below the surface of a legal road

Surface is the surface of a legal road

Unformed road is land that is legal road, but is not physically formed as road (commonly referred to as paper road)

Utilities include electricity, gas, telecommunications, water, wastewater and stormwater infrastructure

Utility operator includes any utility operator that is legally entitled to use and occupy legal road for utilities

Verandah is a roofed open area attached to a building and includes a canopy over legal road

4 Encroachments

These guidelines apply to encroachments within the road corridor.

4.1 The road corridor

- The road corridor is legal road including the carriageway (formed road), unformed road (paper road), footpath (including edge, kerb and channel) and grass berm or verge. These features are collectively referred to as the road corridor. It comprises the surface, airspace and subsoil.
- The road corridor in most cases is the space from your property boundary across the road to the opposite property boundary. The road corridor can also include access ways and service lanes.
- Photos of the road corridor, formed and unformed, are shown in Figures 1-4 below.



Figure 1: Photo of the road corridor (formed, aerial view)



Figure 2: Photo of the road corridor (formed, landscape view)



Figure 3: Photo of the road corridor (unformed, aerial view)



Figure 4: Photo of the road corridor (unformed, landscape view)

4.2 Encroachment examples

- Encroachments are categorised as surface, airspace or subsoil encroachments. Examples of surface and airspace encroachments are shown in Figures 5-8 below.

Surface encroachment: Parking platform

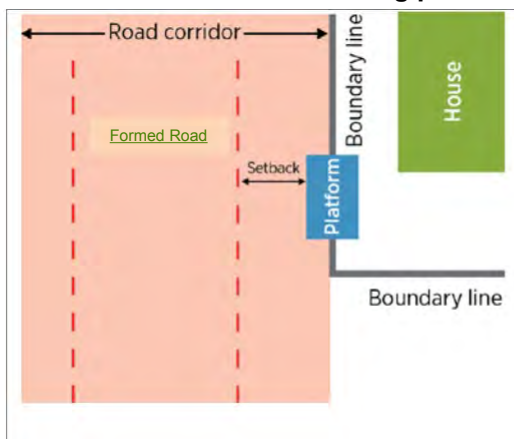


Figure 5: Parking platform encroachment (aerial view)

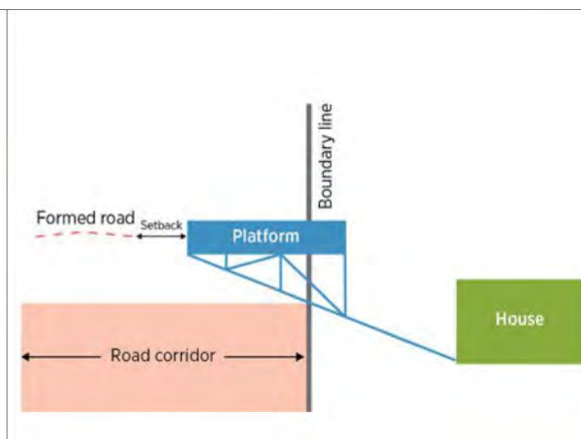


Figure 6: Parking platform encroachment (landscape view)

Airspace encroachment: Verandah

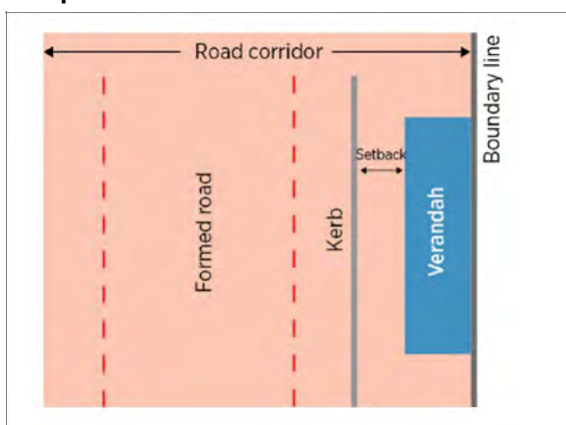


Figure 7: Verandah encroachment (aerial view)

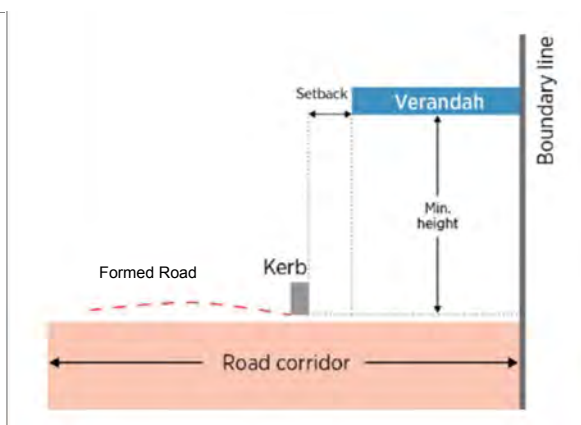


Figure 8: Verandah encroachment (landscape view)

4.3 Supported or not supported

- Each application for an encroachment licence is assessed on its own merits as part of the application process and subject to the principles and requirements set out in these guidelines. Certain types of encroachments however are more likely than others to be supported by AT. The table below identifies the types of encroachments that may be supported by AT and those unlikely to be supported by AT. A resource consent is granted by Auckland Council, whereas an encroachment licence is granted by AT for an encroaching structure in the road corridor. The grant of a resource consent is a separate process and does not mean that AT will agree to an encroaching structure being located in the road corridor.



May be supported	Unlikely to be supported	Structures/activities in the road corridor that are subject to a different AT / Auckland Council approval process (i.e. not dealt with as part of the AT encroachment licence application process)
Retaining and facing walls <i>To support construction of a driveway or private road in steep or difficult terrain</i>	Buildings (including dwellings, commercial and industrial premises, garages, carports and sheds), habitable or otherwise	Bollards in front of shops <i>Contact AT Transport Controls</i>
Parking decks, platforms and bays <i>To allow parking in the road corridor in steep or difficult terrain</i>	Bridges	Memorials, white cross memorials, plaques and statues <i>Contact AT Transport Controls</i>
Paper road formation <i>To allow vehicle access on an area of unformed road corridor</i>	Enclosed areas <i>Enclosing part of the road corridor by fences, walls or other structures/barriers</i>	Trails on unformed roads which do not involve excavation <i>Contact AT Transport Controls</i>
Walkways / steps <i>To allow pedestrian access in steep or difficult terrain</i>	Billboards and ancillary structures	Signs (excluding billboards) <i>Refer to the Signage Bylaw 2015</i> Signs not regulated by the Signage Bylaw 2015 (excluding billboards) <i>Contact AT Transport Controls</i>
Grazing <i>To allow an adjoining farm to graze stock on unformed road corridor</i>	Carparking for exclusive use (e.g. painted lines on road seal)	Narrow path from footpath to property <i>Apply for a Corridor Access Request through the AT website:</i> https://at.govt.nz/about-us/working-on-the-road/corridor-access-requests/
Verandahs <i>To provide weather protection to the public in commercial areas</i>	Verandah support poles	Building on land subject to an AT designation <i>Apply for approval through the AT website:</i> https://at.govt.nz/about-us/working-on-the-road/road-processes-for-property-owners/consent-for-works-in-an-at-designation/
Architectural features including curtain walls and exterior cladding, eaves and window shutters	Private lighting installations	Underpasses and cellars <i>Contact AT Asset Management team</i>
Pedestrian airbridges <i>To provide safe pedestrian passage from one building to another</i>	Private pipework or infrastructure works (including water supply, wastewater, stormwater and water storage tanks)	Charging stations <i>Contact AT Transport Sustainability team (on a case by case basis)</i>



May be supported	Unlikely to be supported	Structures/activities in the road corridor that are subject to a different AT / Auckland Council approval process (i.e. not dealt with as part of the AT encroachment licence application process)
Temporary ground anchors <i>Temporary use of subsoil to support construction on an adjoining property</i>	Private pedestrian ramps solely to provide access to an adjacent building <i>Exceptions are considered in streets assessed to have a high 'place' value and where the ramp design provides increased amenity value for public space activation, or for retrofit mobility access to existing buildings (both exceptions are on a case by case basis)</i>	Seating and tables on the footpath (outdoor dining) <i>Contact Auckland Council Outdoor Dining</i>
Existing unauthorised encroachments <i>(on a case by case basis – refer to Section 4.5)</i>	Slot drains	Trees and other planting on the berm <i>Contact Auckland Council Parks and also refer to:</i> https://at.govt.nz/about-us/street-maintenance/berm-maintenance/
		Community garden and planting projects <i>Contact AT Transport Controls</i>
		Kerb discharge <i>Contact Auckland Council Regulatory Engineering</i>



4.4 Third party consents

- If the encroachment affects any utilities you may need the utility operator's written consent. If an encroaching structure would cause a frontage breach preventing another land owner's access to the road corridor at any point along their property frontage, you will need the land owner's written consent.

4.5 Existing unauthorised encroachments

- Occasionally a land owner will have constructed an encroaching structure e.g. a parking deck within the road corridor without approval from AT or a predecessor council. In some cases, AT may allow an unauthorised encroachment to remain if there are no safety issues and the principles and requirements outlined in these guidelines are not compromised. In other cases, AT will request that the unauthorised encroachment is removed.
- Where an unauthorised encroachment is permitted to remain, AT will require the owner to apply for an encroachment licence.
- Alterations to an unauthorised encroachment will also require an encroachment licence application to be made.
- The costs to resolve an unauthorised encroachment, whether by removal or through an encroachment licence application, are borne by the owner who benefits from the encroachment.

5 Application Fees, Costs and Ongoing Licence Fees

- If you apply for an encroachment licence, you will pay a non-refundable deposit and all additional costs, charges and disbursements associated with the application. These costs may include:
 - AT staff time for processing the application
 - If your application is approved, AT's lawyers' fees for preparing and registering the legal documents
- Additional costs will be advised and invoiced to you on an interim and/or final basis.
- In some cases, you will need to pay an ongoing licence fee to AT for the use of the road corridor. AT may require that the licence fee is determined by a registered valuer at your cost.
- Additional information regarding applications fees and costs and licence fees is available on AT's website.

6 Approval Process

- Encroachment licence applications will be considered on a case by case basis in accordance with relevant principles, other than in cases where this may lead to inconsistency or unfairness. The decision to grant an encroachment licence is at AT's discretion. AT's decision is final and there is no right of appeal.
- The encroachment must meet the technical requirements and specifications for that encroachment type. Information is included at Appendix 1 of these guidelines.
- The encroachment must also comply with AT Policies and Guidelines including Vision Zero, the Urban Street and Road Design Guide, the Transport Design Manual and the Roads and Streets Framework.



- Additional information regarding the encroachment licence application process, including the application form, is available on AT's website.

7 Encroachment Licences and Encumbrances

- If AT grants an encroachment licence, AT may require, at its discretion, that the licence is secured by a first ranking encumbrance on the title to your property at no cost to AT.
- AT's authorisation is a land owner approval. It is not regulatory approval. Regulatory approvals could be required e.g. resource consent and/or building consent from Auckland Council. An AT Corridor Access Request could also be required for works in the road corridor.
- An encroachment licence is granted on AT's standard terms for an encroachment of that type, i.e. a surface licence, an airspace licence or a subsoil licence.
- Copies of AT's standard form licences and encumbrances are available on request. Some key terms are highlighted in Appendix 2.

8 Compliance

- Encroaching on the road corridor without AT's (or a predecessor Council's) approval is a breach of section 357(1) of the Local Government Act 1974 and can lead to prosecution.
- An encroachment without AT's (or a predecessor Council's) approval may result in:
 - Fines up to \$1,000 plus \$50 per day on which the offence has continued
 - Costs for removal and repair
 - A non-compliance note placed on your property file at Auckland Council

9 Monitoring and Review

These guidelines will be reviewed and updated as required.

10 Related Documents

- These guidelines are related to the following:
 - AT Management of Unformed Legal Roads
 - AT Ground Anchor Guidelines (currently in draft) and available upon request
- These guidelines replace the AT Road Surface, Airspace and Subsoil Encroachment Guidelines (updated February 2021).



11 Document Status

Owner (contact for clarity, updates etc):	Technical Property Services	propertygroup@at.govt.nz
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Issue date:	May 2022	
Review date:	_____	



Appendix 1

Technical requirements and specifications

An encroachment licence application must include supporting plans showing the following information together with any required reports. Additional information may be required depending on the proposed encroachment.

For all encroachment types:

- Dimensions and area of encroachment
- Construction details and materials
- Fixing details
- Stormwater drainage
- Property boundary
- Proximity to utilities and assets in the road corridor e.g. traffic lights, street lights, power poles, bus shelters, street trees

For specific encroachment types:

Airspace - Verandahs

- In accordance with Unitary Plan requirements and resource consent conditions
- Minimum height from footpath to underside of canopy: 3m
- Minimum distance from kerb to outer edge of canopy:
 - 700mm; or
 - 1m when located near a bus stop or on a bus route serviced by double decker buses (and subject to carriageway cross fall at this location); or
 - 1m when located near a loading zone or an area used by oversized vehicles (and subject to carriageway cross fall at this location);(unless AT requires an increased setback)
- Where glazed, opaque or patterned glass, not clear glass
- Self-supporting, cantilevered from the building
- Stormwater collection within the boundary of the property
- Lighting in accordance with Unitary Plan requirements
- Providing adequate weather protection to pedestrians



Airspace - Architectural features on buildings including curtain walls and exterior cladding, eaves and window shutters

- Minimum height above road surface/footpath: 3m
- Minimum height of opening portions of windows above the road surface/footpath: 2.5m
- Minimum footpath width as specified by AT: 1.8m

Airspace - Pedestrian airbridges (not necessarily for exclusive pedestrian use, in conjunction with the AT Chief Engineer's office due to engineering complexity)

- Minimum vertical clearance: 6.5m
- Engineering report
- Traffic report
- Report demonstrating pedestrian benefit and safety aspects, as well as for other non-motorised users and if required by AT for motorised disability vehicles e.g. mobility scooters and electric wheelchairs

Surface - Structures e.g. retaining walls/parking platforms

- Minimum set back from the edge of the seal (road) or kerb: 1.8m
- Maximum height of retaining wall from road end of the retaining wall: 0.6m
- Gradients within the road corridor
- Sightlines – AT may require a sightline study if there are visibility concerns
- Loading tolerances
- Piling details
- Traffic report if AT requires

NB: Land owner consent may be required if the encroachment crosses the frontage of another property

Surface - Paper road formation

- Cross sections showing width and drainage
- Long sections showing all gradients
- Cut and fill (if any)

NB: Land owner consent may be required if the encroachment crosses the frontage of another property

Subsoil - Ground anchors and other subsoil encroachments

- Refer to AT's website for information. Ground anchors are considered in conjunction with the AT Chief Engineer's office due to engineering complexity



Appendix 2

Licence and registered encumbrance key terms

Encumbrance:	An encroachment licence is usually secured by a first ranking encumbrance to AT on the title to your property.
Licence not lease:	AT's practice is to grant an encroachment licence, not a lease. Whilst legislation provides for a lease of airspace or subsoil, AT chooses to grant the lesser right of a licence.
Non-exclusive use of road corridor:	The licensed area remains public road space and any member of the public is entitled to use it e.g. a parking platform can be parked on by anyone and any gates across the road corridor cannot be locked.
Limited duration (20 years maximum):	An encroachment licence is granted for a maximum of 20 years, generally being an initial 5 year term with 3 rights of renewal of 5 years each. This maximum 20 year term applies regardless of the projected lifetime of the encroachment.
Maintenance and repair:	You must repair and maintain the encroachment at your cost and obtain AT's prior approval to alter the encroachment.
Removal of encroachment on one month's notice:	In certain circumstances, AT can require you to remove the encroachment on one month's notice at your cost e.g. if the encroachment is creating a nuisance, or if removal is required for safety or road works. You are not entitled to any compensation.
Ongoing licence fee:	You could be required to pay an annual licence fee to AT for the use of the road corridor. Any licence fee is subject to annual CPI increases and periodic market reviews.
Insurance requirements:	<ul style="list-style-type: none">• Before commencing works in the road corridor, your contractor must hold public risk cover for a specified amount (usually \$2,000,000) to indemnify the contractor, AT and yourself against public liability risk.• During the licence term, you must hold public risk insurance cover for a specified amount (usually \$2,000,000) to indemnify AT and yourself against public liability risk.



Engineering inspections:	AT needs to ensure that encroachments in the road corridor remain structurally sound and in a good state of repair. You must provide an engineer's report to AT at specified intervals certifying the structural soundness and general state of repair. These intervals depend on the type of encroachment e.g. a verandah requires an engineer's report at 5 yearly intervals.
Construction and maintenance encumbrance:	In some cases, a surface encroachment (e.g. paper road formation, retaining wall or stairs) will be documented in a construction and maintenance encumbrance (C&M encumbrance) instead of a surface licence and encumbrance. A C&M encumbrance incorporates many of the same terms as a surface licence and is registered as a first ranking encumbrance on the title to your property.
Assignment of licence:	A licence is a personal right. It does not automatically transfer to the purchaser of your property. If you sell your property, you are required to complete the assignment of the encroachment licence to the purchaser upon settlement, so the purchaser takes on your obligations under the encroachment licence as the new owner of the property. Your solicitor can arrange the assignment document through AT's solicitor.
No subletting:	The licensed area cannot be sublet to another person/party.