

Information Sheet

Privately owned structures that encroach on or under Council roads require an Agreement to Occupy

Agreement to Occupy – who needs one?



*The example shown is a structure intruding (encroaching) on Council-owned road.
The road boundary is shown as red lines*

If you own improvements they should be contained within your land boundaries. Improvements that intrude onto the road are called encroachments and may be:

- structures that are partially or fully above ground, such as a garage; or
- infrastructure that may be partially or fully below ground, such as pipes.

Where improvements encroach onto or under that land that is road, the Council's written permission is required for them to remain. Roads are not always formed. Roads that have not been constructed but exist in plan form (sometimes known as a 'paper road') still have the legal status of a road.

If the Council agrees to your improvements being on or under a Council road, an **Agreement to Occupy** will set out the details and conditions the Council attaches to your encroachment.

Agreements can be:

- Short term – known as a Licence to Occupy (LTO); or
- Longer term – known as an Encumbrance.

Agreement to Occupy – what does it cost?

Costs comprise:

- Application fee
- Documentation fee
- Annual rental

Application fee of \$200.00 (incl. GST) and non-refundable

This cost covers the Council's time to initially consider an application. If the application proceeds, an agreement will be issued for either a short term or longer term. Note: If Council staff need to visit the site or there are other complexities, additional costs are payable.

Short Term Licence to Occupy (LTO)

This authorises the encroachment for a term up to a maximum of five years. A short term LTO is *not* noted on the title to adjacent land. To be considered for a short term LTO, applicants must agree that the improvements will be removed within the approved term. When Council grants a short term LTO, a **documentation fee** of \$200.00 (incl. GST) is payable.

Longer Term Agreement to Occupy

This authorises the encroachment of road land for improvements that are not intended to be removed in the short term. Terms are typically for ten to twenty years. An Encumbrance agreement is prepared in conjunction with Council's solicitors. The agreement is then registered on the title of the adjacent land. The **documentation fee** payable is typically around \$2,000 plus GST. The applicant must also pay their own survey costs and legal costs.

Annual Fee/Rental: An above ground encroachment in a rural zoned land up to 20m² is charged at \$300 (incl. GST) per annum and in any other zoned land up to 20m² at \$600 (incl. GST) per annum. Below ground encroachments are assessed on a case-by-case basis, taking into account the scale of the encroachment with a minimum of \$300.00 (incl. GST) per annum. These rents are reviewable every 3 years.

Significant above ground encroachments over 20m² in any zone are charged at market value determined by an independent valuer.

How to apply for an Agreement to Occupy

You will need to complete an Agreement to Occupy application form and pay the application fee. The more information you can supply with your application, the easier it will be for the Council to consider your application (see below).

What information should you supply?

1. **The purpose and full details of the extent of the encroachment onto or under the road.** Applications for a longer term encumbrance should include an Occupation Plan supplied by a registered surveyor. If the encroachment is underground, GPS coordinates of the proposed encroachment should also be supplied. Applicants applying for a short term licence to occupy may prefer to apply using a marked up aerial photograph. However the Council will not accept responsibility if an aerial photograph is later found to be inaccurate i.e. if formal plans are subsequently required and show the encroachment is occupying less land.
2. If the encroachment is to be authorised by an Encumbrance, an Occupation plan prepared by a registered surveyor generally must be supplied.
3. Applicants are asked to provide a current Record of Title and site photos.
4. You should also advise Council of what forms of consultation you have had with other parties who could be affected by your proposals i.e other neighbours. Letters of consent from neighbours are advisable.

Council is obliged to consider public access

When considering an application for an Agreement to Occupy, Council seeks assurance that public use and enjoyment of the legal road won't be affected.

An application stands a greater chance of being approved if Council can be confident that public access is not hindered, or is improved, because for example, the applicant will keep the land tidy.

Applicants should also ensure nearby landowners are informed and broadly support the proposal. Where applicants cannot provide evidence of informed consent from affected neighbours, Council staff may approach neighbours about the proposal. This could incur further costs as staff time is a recoverable expense payable by the applicant.

Above ground and below ground applications

Council makes a clear distinction between 'above ground' and 'below ground' applications.

Improvements that sit above the legal road surface will only be considered if they were established in error and are historic in nature.

New improvements will only be considered if they are below the legal road surface i.e. pipes, stock underpasses.

Applications to establish underground pipes below a road should be limited to those where the pipes run across the legal road. Where pipes are intended to run along the legal road for a significant distance, an application is unlikely to be approved.

Where there is a risk of damage to the road surface used by the public, a bond will be required.

The preferred method of installation of below ground pipes is drilling / thrusting to prevent damage or disruption to the road network.

Any pressurised pipe must be ducted.

For a complete list of the information Council requires, please refer to the Agreement to Occupy a Road – Application Form.

In circumstances where adherence to the Council's requirements would cause hardship, the situation will be considered on its merits and exemptions may apply.

For further information, please email the Council's Property Services team at propertyofficers@tasman.govt.nz