

Nelson City Council

Policy

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ROAD OCCUPATION POLICY

2006

Nelson City Council

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Road Occupation Policy

1 INTRODUCTION

The Nelson City Council (Council) administers more than 247km of road around the city which is made up of formed road, and unformed road.

Nelson's topography is one of a mixture of steep hills and flat land. This has resulted in some instances of narrow roads with limited room for on-street parking and some 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 formed roads are often much narrower than the width of the land legally designated as road. This means that in many cases the land between the property boundary and the formed road can be very wide and over time some of this land has been utilized as if part of the adjacent property.

In addition, some of the planned roads were never formed and are still in bush or just small walkways, while other roads are only partially formed.

Several road reserves are used for public walkways and/or private right of ways.

The Council presently has 116 road occupation licences which allow the occupier of the adjoining land to use some of the road reserve for private purposes. The licences are usually for garages and carports, erected in this location because it was impractical or too costly to construct these structures entirely on private property.

The present Council policy is that existing structures will only be permitted to remain pursuant to an occupation licence (refer Appendix 1), and that no new structures will be permitted on road reserve (refer Appendix 2).

2 OBJECTIVES

The Road Occupation Policy aims to ensure that the Council issues and administers road occupation licences on a consistent and transparent basis.

3 DEFINITIONS

The following definitions apply when reading this Policy.

Exclusive occupation is that situation where the public is prevented, usually by way of fencing, from being able to access road reserve.

Footpath is that part of a road that is laid out or constructed primarily for the use of pedestrians and includes the edging, kerbing and channeling.

Road has the same meaning as in the Local Government Act 1974, and includes the:

- Carriageway (formed road)
- Footpath
- Land between the carriageway and property boundary.

A **road occupation licence** authorises a right to occupy land but it does not provide an interest in the land. A licence does not create the same rights or expectations as a lease.

Road reserve for this Policy means all that part of a road that is not formed. This includes the unformed road between a formed road and/or footpath and the adjacent boundary; and those roads with no formation of any kind.

Structure includes such improvements as:

- Vehicle garages, car pads, car decks, car ports
- Retaining walls exceeding 1.0m in height which are solely for landscaping purposes and not associated with a driveway access
- Houses, for example any part of a building, eaves, porches, decks, balconies or conservatories that protrude on to road reserve.

4 POLICY PRINCIPLES

To aid decision-making about the occupation of road the following principles are applied to all road occupations.

Protection of rights

The primary principle is that the public have the right of unimpeded access to and along all roads, be they formed or unformed (including carriageways, road verges, and footpaths), to enable free pedestrian and traffic movement and access to private property. To obtain a right to occupy road reserve, the applicant must satisfy the Council that the occupation will not unduly compromise this right of access.

Protection of community amenity

Roads are not only for public use but the roading corridor also contributes to the aesthetics of the area, the streetscape value, and the provision of open space.

The Council wishes to promote a balance between the expectations of the wider community, property owners and users of the area involved. The Council will therefore take into account whether the private occupation of road reserve will enhance the area and facilitate higher quality and safer use of private land than could otherwise be reasonably achieved.

Public and private benefit

Road reserve has significant public benefit. For example, it may provide space for utilities, add amenity value, and may be utilized for future development of roads and footpaths. This Policy formalises the philosophy that private use can be made of road *and* have public benefits. For example, the revenue generated will benefit all ratepayers, or the facilitation of off-street parking will benefit the public as it helps to make Nelson's narrow roads easier to drive along. In addition many property owners maintain the adjacent road frontage which reduces the burden on the ratepayers and also contributes to the amenity of the area.

Transparency

It is important that the Council's position on road occupation is clearly outlined in the Policy. This will allow the public and applicants to clearly see how applications for an occupation licence of road reserve are evaluated.

5 APPLICATION OF POLICY

This Policy applies to all structures and/or exclusive occupation of road reserves within Nelson City.

The Policy does not apply to utility companies because they have specific statutory rights to allow them to utilise the road to provide various utility services. Neither does it cover activities on the footpath or a formed carriageway.

This Policy comes into effect on 1 July 2007.

When is a road occupation licence needed?

Any property owner presently occupying or using road reserve for exclusive private purposes may apply to the Council to obtain a road occupation licence (refer Appendix 1).

When is a licence not needed?

A road occupation licence is not required for the road reserve where it is maintained by the residents, as they are encouraged to maintain and beautify these areas in their streets. These areas are not intended to have structures, for example fences, put on them or features that may reasonably be interpreted as restricting public access or driver vision.

This policy permits discretion to be exercised by the Chief Executive with respect to:

- The waiving of rentals and/or fees for road occupation licences where sections of rural road reserve are fenced to be incorporated within the adjoining farm land, and the fencing will not permanently restrict access to members of the public
- The waiving of rentals and/or fees where the occupation of road reserve was authorised by an earlier written agreement with the Council

Not included in this policy are

- The sale of road (these are considered by Council on a case by case basis)
- Licences to Occupy for outdoor dining and for street stalls (usually in the CBD, both activities controlled by a separate Council policy).

5.1 Residential use of legal road

The majority of road occupation licences issued by the Council are for the benefit of residential properties and most apply to the placement of structures on road reserve for parking purposes. The licences can benefit both the property owner and the public as they can facilitate offstreet parking that make Nelson's often narrow roads safer and easier to drive along. Some licences apply to the exclusive occupation of road reserve.

Criteria for allowing road occupations

The Council will not accept applications for new occupations of road reserve. Instead, the procedure outlined in Appendix 2 shall be followed.

Terms and conditions of licence

A road occupation licence is only issued to a property owner, is personal to that property owner, and is not automatically transferable. It may be revoked by the Council by giving six month's written notice to the licence holder. If the adjoining land owner wishes to obtain certainty over the continuation of an occupation, they may apply to purchase the road reserve occupied, as outlined in Appendix 2, with the knowledge there is no guarantee the application will be approved.

When a property is sold the structures on the road reserve are deemed to be transferred to the new owner who becomes fully responsible for the maintenance of the structures. A new licence will be issued to the new owner when the Council is notified about the ownership change, provided there are no issues with the occupation. This means the:

- structure is in good repair
- all fees have been paid
- the selling owner is not in breach of the terms of the licence
- the licence does not have any special conditions which would prevent the transfer, for example, special termination clauses.

In addition, any occupation licence that is issued to a property owner will be recorded on the land information memorandum (LIM) for that property, as it is not able to be recorded on the certificate of title for the property.

Should the licence holder want to change the use of the structure or its occupation they must apply to the Council for written consent.

5.2 Commercial use of legal road

Occupation of legal road for commercial purposes is not encouraged, however an application will be considered on its merits.

5.3 Commercial use of airspace

There are limited situations where commercial premises protrude into the airspace above a road. To provide certainty and better security to the property owner, a lease will usually be issued in preference to an occupation licence. Each case will be considered on its merits.

5.4 Commercial and residential use of subsoil

Subsoil occupation of a road for commercial or residential purposes is not encouraged, however each case will be considered on its merits.

5.5 Rentals and Fees

This section outlines the rental and fee charges applicable to road occupations.

5.5.1 Rentals

The following rental policy will apply for existing road occupations (excluding “not-for-profit” organisations, see below).

- The following formula will apply:

$AR = A * V * R$, where

AR is the annual market rental

A is the area occupied

V is the average land value per m^2 of the adjoining property, as determined by the rating valuation each 3 years

R is the rental rate, of 5%.

For example:

- (i) assume the area occupied is $15m^2 = A$
 - (ii) assume the adjoining property is $750m^2$ and its rateable land value is \$150,000; then the average land value/ m^2 is $\$200/m^2 = V$
 - (iii) $15m^2 * \$200 * 5\% = \150 plus GST.
- The minimum annual rental will initially be \$200 plus GST, no matter how small the occupation (this is in recognition of not charging an administration fee, see 5.5.2 below). In the example above, the licence holder will therefore be charged \$200 plus GST.
 - The rating valuations are reassessed every 3 years. The annual rentals will be reviewed every 3 years following the release of the rating valuations.
 - This formula will result in substantial rental increases, so a graduated increase will be implemented as follows:
 - (i) For existing occupations, the rental increase will be \$50 per year until the market rental is reached
 - (ii) When the adjoining property changes ownership, the new licence holder will be charged market rental
 - (iii) If the adjoining owner is granted approval to change the use or size of the occupation, a new licence will be issued at market rental
 - The maximum annual rental will initially be capped at \$1,000 plus GST
 - The maximum and minimum annual rentals will be adjusted every 3 years by the average movement in residential land values as assessed for rating purposes
 - “Not-for-profit” organisations, as defined in the Community Assistance Policy, that have been given approval by Council to occupy road reserve will pay a rental as per the formula in the Community Assistance Policy.

5.5.2 Fees

- Currently, an administration fee is not charged. The minimum annual rental of \$200 plus GST will apply (see above), and no administration fee will be charged.

Annual road occupation rental

When does it apply?

The annual rental applies where the occupation includes structures and/or exclusive occupation.

When doesn't it apply?

No rental is payable when the occupation does not restrict public access and there are no structures on the land occupied.

No rental is payable where a structure such as a driveway, deck, bridge, cable car or retaining wall that is located on steep land provides the only vehicle and/or pedestrian access to private property.

5.6 Term

There will be no fixed term. However, Council will retain the right to provide no less than six months written notice to remove the structure if the land is required for another purpose.

6 ENFORCEMENT

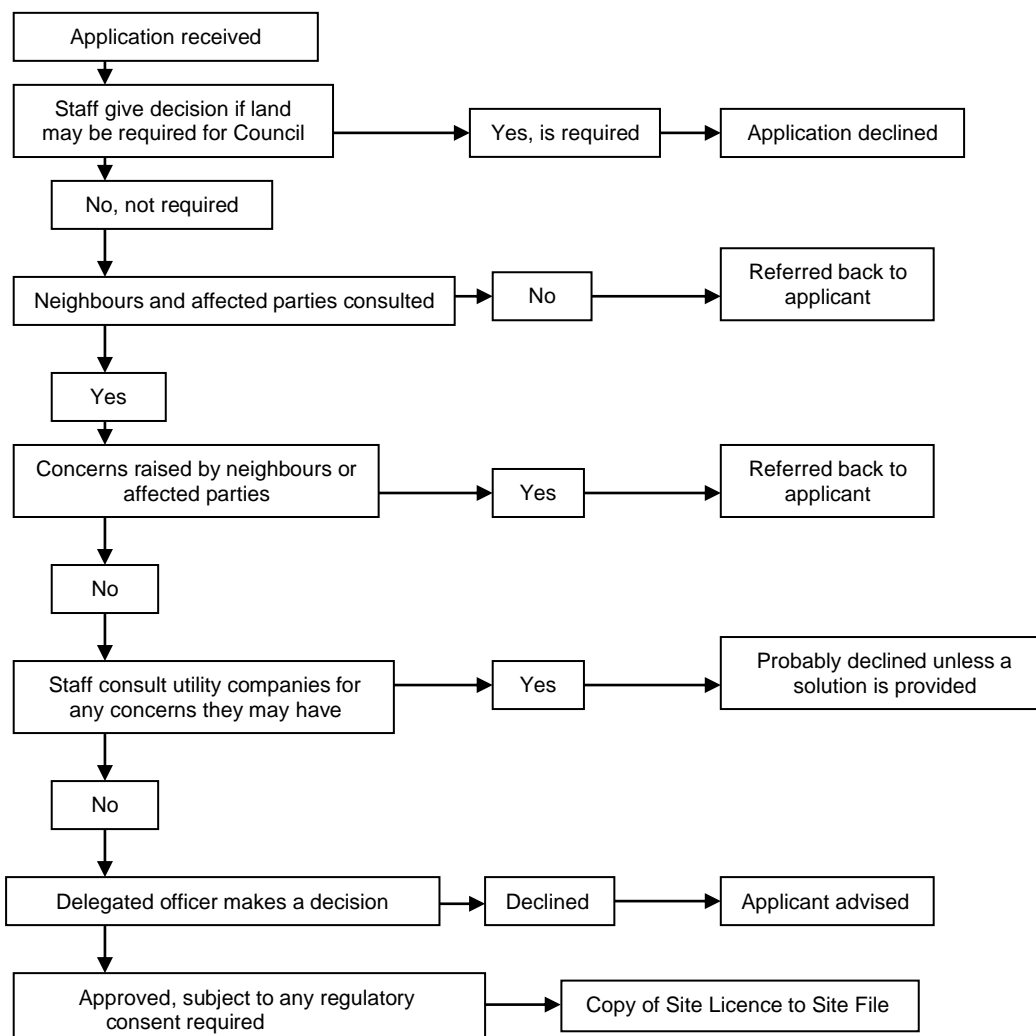
As the Council is made aware of structures on road reserve that have been built without its consent or do not have an occupation licence, it will require the current owner to either obtain an occupation licence or to remove the structure, notwithstanding the structure may have been there for a number of years and may have been built by a previous owner of the adjoining property.

APPENDIX 1

Application process for an Occupation Licence

Refer to the flow diagram below for the application process.

1. An application is made to the Council for an existing occupation or changes to the current occupation (ownership or size or use).
2. The application is acknowledged, and if additional information is required, this will be requested.
3. Where appropriate, the applicant is to consult with neighbours and affected parties and, if necessary, written consent is sought from affected property owner(s).
4. Council staff consult with utility companies.
5. Council business units inspect the proposed occupation site.
6. Delegated officer on behalf of the Council, as landowner, approves or declines the application. If approved, it will be subject to the applicant obtaining any necessary regulatory consents.
7. A Licence to Occupy complete with a plan identifying the land is sent to the applicant for signing, and is returned to Council for signing. A completed copy is returned to the applicant for their records.



APPENDIX 2

Structures on road reserve within urban areas (Council resolution 5 June 2003)

1. Structures will not be permitted to be constructed on any road reserve within any urban area in the City. In this policy “road reserve” is defined as the area of legal road between the formed carriageway/footpath and the adjoining property boundary. Existing structures will not be permitted to remain on road reserves without a licence to occupy.
2. If a road reserve is not required for future roading purposes, it shall be assessed to determine whether the land is required for any other Council purpose.
3. If the adjoining property owner wishes to buy the road reserve and if the Council does not require the land then consideration will be given to selling the land subject to:
 - a) Neighbours, adjacent to and across the road from the property, being consulted and any opposing views being considered by the Council.
 - b) The sale being confirmed by a Council committee.
 - c) The land being purchased at market value.
 - d) The property owner paying all legal, survey, valuation and administration costs.
4. If the Council does not know precisely the extent to which it could require the road reserve for future roading purposes, the property owner requiring the land will be asked to contribute towards the cost of a roading design to determine the extent of land needed by Council for future roading upgrades such as footpaths, road widening, kerb and channel, etc. The timing of carrying out the design work will be subject to available funding for the Council’s share of the costs.
5. For existing structures on road reserve:
 - a) The property owner will be required to enter into a licence to occupy and the details of that agreement will be recorded in the site file.

If the owner does not enter into a licence to occupy the Council may initiate action to remove the structure(s) at the cost of the owner of the structure.
 - b) Should the road reserve be required for any Council work at a future date the costs of relocation and reconstruction of any structure(s) will be required to be borne by the property owner. (This will be a standard condition of all licences to occupy).
 - c) The licence to occupy may require a commercial rent to be paid for buildings (i.e. excluding fences or retaining walls) on occupied road reserve.

This policy will be reviewed before 31 May 2008.