



Rural Roads Fence Encroachment Policy

1.0 INTRODUCTION

This policy sets out the Council's practice in regard to the management and licensing of areas of Council-administered rural roads fenced for the grazing of stock by the adjoining property owner/occupier in the Whakatane District.

2.0 OBJECTIVES

The objectives of this policy are:

- To provide for the grazing of the road berm in rural areas where practical.
- To maintain tidy road corridors in rural areas.
- To control noxious vegetation on roads in rural areas.

3.0 PRINCIPLES

The principles underlying this policy are:

- That the safety of road users will be protected.
- That the public right for access will be preserved.
- That interference with services and service providers will be prevented.
- That the efficient maintenance of the road will be promoted.
- That legitimate operations within the road will be permitted.

4.0 DEFINITIONS

"Applicant" is the owner or occupier of the property immediately adjacent to the Road.

"Council" is the Whakatane District Council as represented by the Asset Manager Transportation or a Council Officer authorised to act on behalf of the Council.

"Occupation Area" is the area of the road berm between the property boundary and an encroaching fence used for grazing.

"Encroachment Fence" is a fence erected by the Applicant with the Council's approval within the road.

"Road" is any legal road as defined by s315 of the Local Government Act 1974 (this does not include State Highways which are administered by Transit NZ).

"Licence" is a licence to occupy part of a road for grazing purposes granted by the Council under s45 Public Works Act 1981.

5.0 BACKGROUND

In the past the Council has granted licences to occupy the road berm in rural areas for grazing. Such licences have been granted at the discretion of a “Roading Engineer” without any guidelines or policy on how to administer the licence and encroachment fence erected by the adjoining farmer.

Given the varying set-backs and types of fences that farmers have erected on the road berm, it has become apparent that the safety of road users has been compromised by fences being too close to the carriageway and/or constructed of materials that may cause injury. Therefore it is necessary for the Council to have a policy for the issuing of fence encroachment licences, and on the location and standard of fencing that can be permitted on a road berm in a rural area.

6.0 RESPONSIBILITY

The Asset Manager Transportation has responsibility for review of this policy. The implementation of this policy is delegated to the Asset Manager Transportation.

7.0 POLICY STATEMENT

7.1 Acceptance of a Fence Encroachment on a Rural Road

The acceptance (or otherwise) of all fence encroachments remains at the full and sole discretion of the Council. Amongst matters that the Council will take into account in the exercise of its discretion are whether the fence encroachment will:

- interfere with access to another property;
- effect road safety or the public’s right to use the road;
- assist in efficient maintenance of the road berm;
- have consequences to any services within the road or to any service provider;
- permit the ongoing maintenance of the road carriageway.

7.2 Temporary Fences (up to seven days)

Lightweight temporary electric fencing with a single strand tape will be permitted up to and no closer than one metre from the edge/shoulder of the carriageway, along the Applicant’s road frontage immediately adjoining their property without Council permission for a period up to seven days before being removed.

Posts shall be lightweight “pig’s tails” type or similar, so as not to pose a danger to vehicles. Wooden posts or waratahs (steel fence standards) are not permitted. A temporary fence shall be splayed at 45degrees from any gates or entrances along the road berm being grazed.

Only cattle shall be grazed. Sheep, bulls, pigs and horses are specifically excluded and the stock can only be kept in the Occupation Area during daylight hours.

All temporary electric fences will be deactivated when not in use.

Any temporary fence on the road will be removed or relocated by the Applicant when requested and directed to do so by the Council.

When the Applicant fails to remove or relocate a temporary fence as directed by the Council within 24 hours, the Council may remove or relocate the temporary fence at

the Applicant's expense and any stock within the Occupation Area will be treated as wandering stock in terms of the Council's bylaws.

7.3 Permanent Fencing

The owner or occupier of a property with frontage to a road in a rural area may apply to the Council for a Licence to fence and occupy part of the road berm for grazing purposes.

An application for a Licence to fence and occupy part of a rural road berm will be considered only if the Applicant meets the following criteria:

- The road is located in a rural zone in the District Plan.
- The Applicant is the owner or legal occupier of the property immediately adjoining the Occupation Area
- The Applicant has submitted a fully completed application form and paid the application/administration fee of \$350 including GST.
- The Applicant has supplied evidence of Public Liability Insurance indemnifying the Council for at least \$2,000,000.
- The Applicant has no history of illegal or inappropriate grazing of a road berm.

A Licence issued for a permanent fence encroachment on the berm of a rural road will be in accordance with the following requirements:

- The Licence will be for a period of 20 years and by the nature of licences they can be only for the person to whom they are issued and cannot be transferred. If the Licence expires or the farming property adjoining the Occupation Area is sold, then the owner or occupier will have to apply for a new Licence.
- The policy set out in Section 7.1 will be used to determine the position of any Encroachment Fence. However, as a guide, an Encroachment Fence will be considered in accordance with the following table:

Road Traffic Volume (vehicles per day)	Set-back Distance from the Edge/shoulder of the Carriageway to an Encroachment Fence
<200	2.0 metres
200-500	3.0 metres
500-1000	4.0 metres
>1000	Specific Approval Required

Additional set-backs can be required on bends, near bridges, or drains as may be necessary in order to preserve sight lines and clearances (such as passing bays and turnarounds) needed for road maintenance machinery.

If a farm gate or entrance is located within the Occupation Area then the gates or entrance shall remain on the road/property boundary and Encroachment Fence shall be splayed out at 45-degrees from the sides of the gate or entrance.

The final position of any Encroachment Fence permitted under this policy will be at the sole discretion of the Council.

- All Encroachment Fences shall be constructed in accordance with the following specifications and requirements:
 - (i) At least seven plain wires or the equivalent in netting. Barbed wire is not permitted.

- (ii) All posts used shall be of treated exotic softwoods, such as pine and larch (metal, concrete or hardwood posts shall not be used) spaced at least three per 20 metres.
 - (iii) The dimensions of posts shall be:
 - Round posts—not to exceed 125 mm in diameter.
 - Half-round posts—not to exceed 200 mm measured on the cut diameter.
 - Quarter-round posts—not to exceed a radius of 115 mm.
 - (iv) The use of waratahs or other steel posts or battens within the road is not permitted.
 - (v) Angle posts shall be of timber with a maximum diameter of 150mm.
 - (vi) Strainer posts may be considered when the location of the strainer post does not constitute a hazard to road users. Where possible strainer posts will be located on a boundary.
 - (vii) Battens shall be of timber or plastic and there shall be at least five battens between each post if sheep are to be grazed in the Occupation Area.
 - (viii) No gate or entrance shall be constructed in the Encroachment Fence with all access being directly from the Applicant's property to the Occupation Area.
 - (ix) Deer fencing shall not be permitted as an Encroachment Fence under any circumstances.
- The Occupation Area may be used only for the grazing of stock, except pigs. The Applicant can use no part of the road for cropping, horticulture or the planting of trees, shrubs or hedges. Cultivation will be considered if the Applicant has obtained a clearance from all service providers with underground services located within the Occupation Area and the crop will not be over 600mm in height.
 - The Council or the Applicant may cancel the Licence at any time by giving written notice to the other party. The Applicant will then remove the Encroachment Fence and all stock from the Occupation Area Land and (if necessary) restore the road berm in the Occupation Area to its original condition as well as reinstate the boundary fence along the Road within one month of receiving (or giving, as the case may be) the written notice.
 - The Applicant will pay all costs associated with any restoration needed of the road berm and the reinstatement fence on the boundary between the Applicant's property and the Road including surveying costs if the Council considers it necessary in order to accurately re-establish the boundary position.

7.4 Existing Encroachment Fences

Where the Council has previously granted a licence for an encroachment fence on a road berm in a rural area, the current licence with Council will be honoured for a period of three years from 1 June 2006 and thereafter cancelled.

The owner or occupier of the adjacent land must make application for a new licence in accordance with this policy within the three years, otherwise before 1 June 2009

remove the Encroachment Fence and restore the Occupation Area to its original condition as well as reinstate the boundary fence along the Road.

Where the owner or occupier of the adjacent land is occupying part of the Road without a licence or agreement from the Council they must make an application for a new licence in accordance with this policy by 1 June 2007, otherwise remove the Encroachment Fence and restore the Occupation Area to its original condition as well as reinstate the boundary fence along the Road.

7.5 Licence Fee

The Applicant shall pay an application/administration fee of \$350 including GST. The application/administration fee shall be lodged with the application.

There will be no annual charge for the use of the Occupation Area.

The application/administration fee and annual charge will be subject to yearly review and published in the Whakatane District Council Fees and Charges Schedule.

7.6 Management of Rural Road Fence Encroachment Licences

The Whakatane District Council currently administers and manages fence encroachment applications in-house. The Council may consider alternative arrangements or partnerships for the future administration and management of Licences to fence and occupy part of a rural road berm if it is in the best interests of the Council and it is cost-effective.

7.7 References and Relevant Legislation

Whakatane District Council Engineering Code of Practice
Local Government Act 1974
Public Works Act 1981

D R Christison
CHIEF EXECUTIVE OFFICER