

# Trespass Procedure

## Overview

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Auckland Council provides many different types of facilities for the enjoyment and use of the general public. In the majority of cases this unrestricted public access to these Council facilities or land is provided without cause for concern.

Unfortunately there are circumstances that may arise with an individual member of the public or group whose actions or behaviour on a council owned premise do raise concerns for the safety of staff, other members of the public or property and exclusion by trespass is deemed to be the appropriate course of action to eliminate that risk.

This procedure focusses on situations and locations where the public have a licence to enter as outlined below. The content is detailed as the denial of access to a public facility is a significant step and requires careful management. Situations involving council run public meetings are covered under a separate process.

## Public licence to enter

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As a general rule members of the public have a common law licence to enter council public facilities or parks.

This "licence" to enter may take two common forms:

- A bare, or implied licence
- A licence coupled with a contract

Bare or implied licences exist when occupiers allow people onto their land in circumstances where, without the licence, such entry would be unlawful. Examples of a bare licence include when a shopper enters a bookshop to browse, a person goes to a public library or when a collector for charity calls at a house. As this licence is not given for consideration such as an entry fee, it may be revoked at any time.

A licence coupled with a contract exists when permission to enter is given for a consideration. The person's right to enter is guaranteed by contract and cannot, therefore, be arbitrarily revoked. For example, people who have bought tickets to the theatre or similar entertainment cannot be removed from the premises on the management's whim. They have a right to stay for the duration of the performance if they behave properly and obey the management's (reasonable) rules.

Patrons can express their approval or disapproval of the performance if they do so reasonably and with regard to the rights of other members of the audience. They should not create a disturbance or behave in a disorderly manner. If they behave in this way or disobey the management's rules, they are in breach of the contract and can be asked to leave.

In effect the provisions of the Trespass Act 1980 gives the owner or occupier the ability to remove that implied or contractual right and in doing so exclude a person from entering or remaining.

This is done when the occupier or authorised person informs the person in clear terms that the licence is withdrawn.

## Types of trespass

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The Trespass Act 1980 provides for two forms of trespass:

- Section 3 -trespass after warning to leave
- Section 4 -trespass after warning to stay off

Under section 3 a person can be warned to leave a premise. Failure to do so is an offence. If they leave there is no offence committed.

NOTE - This does not withdraw the implied licence for the person to enter on future occasions.

Under section 4 a person who is trespassing or has trespassed may, at the time of the trespass or within a reasonable time thereafter, be warned to stay off that place with the consequence that if this warning is disobeyed within the next two years an offence is committed. Such a warning may be given to a person while he or she is trespassing, after they have trespassed, or where it is anticipated that they will trespass in the future.

NOTE - A trespass notice under section 4 is valid for 2 years. If the trespassed person is subsequently allowed back into the site by the authorised person then this notice is void and cannot be enforced following the reinstatement of their licence to enter. Any consideration of cancelling a notice must be carefully considered and managed. The Police will need to be informed to remove the details from their records. If a notice is under consideration to be revoked - discuss with the Security Manager prior.

## **Delegated authority to trespass**

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The chief executive of Auckland Council has delegated to specific positions or roles within the organisation the authority to act under the Trespass Act. These positions are contained within the Delegation register. A search in this register by unit will list the position or role and the specific powers they can enact under the Trespass Act. Authority may be limited to a specific location or to certain components of the Trespass Act.

This Register is maintained by Democracy Services and a copy can be located on their Intranet page. Only persons with the specific delegated authority may enact the relevant powers of trespass for their respective council facilities but are not able to delegate this power to anyone to act on your behalf such as Staff member or security guard unless you are specifically delegated this additional Power under S2 under the Delegation register.

The Auckland Council Security Manager has delegated authority to trespass persons from any council-controlled property and also has the added power to grant authority to any employee or other person to act as occupier in accordance with the Act for any council-controlled property.

Another person such as a security officer or Police officer may however physically serve a notice that you have written as an authorised person.

## **Trespass Considerations**

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Though the Trespass Act itself does not require any specific behaviour or reason for enacting a trespass notice the test for the exercise of trespass powers is what is reasonable in all the circumstances particularly when issuing a 2 year trespass notice. Before enacting any trespass the following factors must be considered:

- Do I have delegated authority to trespass?
- What are the circumstances of the incident or behaviour?
- Is there a significant risk to staff, other members of the public, site safety or the operation of the facility if they remain?
- Are there other options open to deal with this incident or behaviour?
- Is a section 3 warning to leave but be able to later return sufficient?
- If issuing a formal written 2 year trespass notice do I have reasonable cause to suspect that the person is likely to trespass again?
- Is the incident or behaviour so serious consideration must be given to extending this trespass to other facilities?

For advice or direction please contact the Auckland Council Security Manager or security team.

## Delivery of warnings

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A trespass warning can be delivered to three ways, verbal, written or by registered post.

**Under section 3** - a verbal warning is sufficient:

For example, "I want you to leave the premises now".

If you deliver a trespass notice verbally, it is advisable to record the date and time along with the reason for giving a trespass notice to that person. Also record the name or description of the person asked to leave.

**Under section 4** -the warning, if verbally given, must be more formal with explicit instructions: for example, "I want you to leave the property right now and, under the terms of the Trespass Act, I do not want you to come back onto this property for two years." It is not enough to merely tell the person to leave or to inform the person that he or she is not welcome, because that does not withdraw implied licence on future occasions.

The courts prefer that warnings be in writing, setting out the purpose of the warning and the consequences of failing to observe it.

**Therefore for any trespass warning under section 4 (warning to stay off for two years) the council written trespass notice is to be used.**

This notice covers the explicit instructions required as outlined above.

If you undertake a written trespass, complete three copies of the Trespass Notice:

- one copy to the person you are serving the trespass notice on
- one copy for you to keep
- one copy to give to the nearest police station or attending police officer, for entering into the Police records database
- Forward a copy of the served notice, completed incident report and image if available to [securityservices@aucklandcouncil.govt.nz](mailto:securityservices@aucklandcouncil.govt.nz)

To serve a notice you simply hand it to the person. If they refuse to accept it and it drops on the ground, it is still considered served. Keep that copy and note down that the person refused to accept the notice.

You are required to give a reasonable time for the trespasser to leave. If the person stays or takes an unreasonable time to comply, call 111 and ask for Police.

If someone comes back after you have given them a trespass notice they will have committed an offence. Call 111 and ask for Police.

The method of registered post is not recommended.

In circumstances where the person is no longer on site and the decision that a section 4 notice is warranted service of the notice may be carried out by a security officer or in special cases by Police.

Contact the Auckland Council Security Manager or security team for advice or direction on this process.

## Staff safety

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Staff safety is of the highest importance.

Staff should not put themselves into a situation where there is a serious risk of harm.

If an incident occurs or the individual concerned causes concern for safety of staff or others then security or Police should be immediately called.

In these circumstances the trespass can be carried out in their presence or in the case of a written trespass they may serve those notices on a person directly.

## Use of force

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There are legal provisions in the Crimes Act 1961 (section 56(1)) that allow persons in possession of a building to use reasonable force to either prevent a person from trespassing onto that place or to remove a person from that place provided they do not strike or do bodily harm to that person.

The use of force by a staff member is however **not** recommended except in exceptional circumstances. Situations may escalate as a result and place the staff member and others at risk. If a person is trespassed and refuses to leave when requested - Police should be called.

### **Blanket notices or Police requests for authority to act**

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On occasion council managers are approached by a business association, neighbourhood group or sometime the Police themselves to provide the Police or a security provider a blanket authority to trespass on their behalf from a council facility. Unless you have delegated authority to grant this to another person to act as occupier, as per the delegation register, you are not authorised to grant this request. Such requests need to be accessed on a case by case basis, be time or individual dependant, include strict conditions and based on an analysis of risk.

The Auckland Council Security Manager is authorised to approve such requests. Refer any such received requests to the Security Manager or security team.

### **Trespass from multiple sites or locations**

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In rare situations dependant on the type and nature of offending or risk to staff or members of the public a person may be need to be trespassed from multiple locations either within a single shared complex or regionally.

Examples are all public libraries or a specific shared use facility.

Trespass from multiple locations must be managed carefully based on the type of offending, the clear risk to staff or others, intelligence received and analysis of other factors involved.

In the event that multiple site trespass is considered the matter must be referred to the Security Manager or security team to access and approve.

The Auckland Council Security Manager is authorised to grant such requests.

# Trespass Procedure

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## Purpose

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This procedure describes the processes to be followed in trespassing a person from a council facility or site

## Who performs this role

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Staff member who is authorised under the delegation register to act on behalf of Auckland Council for the purpose of trespass

## Associated policy and process

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Trespass Act 1980

Council Trespass Notice

Security Policy

Any individual unit processes and procedures

## Before you begin

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An incident occurs that determines an individual is to be trespassed from a council owned or managed site or location

## Procedure

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Step	Action						
1.	Determine one of the following: <table border="1"><tr><td>If the action is to...</td><td>Then...</td></tr><tr><td>Verbally Warn a person to leave a premise</td><td>Go to step 2</td></tr><tr><td>Warn a person to leave and not to return for a period of 2 years</td><td>Go to step 3</td></tr></table>	If the action is to...	Then...	Verbally Warn a person to leave a premise	Go to step 2	Warn a person to leave and not to return for a period of 2 years	Go to step 3
If the action is to...	Then...						
Verbally Warn a person to leave a premise	Go to step 2						
Warn a person to leave and not to return for a period of 2 years	Go to step 3						
2.	<ol style="list-style-type: none"><li>1. Approach the person and verbally warn them they are trespassed and that they are required to leave the premises immediately</li><li>2. Allow a reasonable time for them to leave</li><li>3. If the person stays or takes an unreasonable time to comply, call Police and advise call taker that person is refusing to leave after trespass</li><li>4. Complete and forward Security Incident Report to Council Security team at <a href="mailto:securityservices@aucklandcouncil.govt.nz">securityservices@aucklandcouncil.govt.nz</a></li></ol>						
5.	<ol style="list-style-type: none"><li>1 Fully complete three copies of the written trespass notice form</li><li>2 Serve or have served one copy of the trespass notice by handing this to the person</li><li>3 If they refuse to accept it and it drops on the ground, it is still considered served. Keep that copy and note down that the person refused to accept the notice</li><li>4 Inform the person that they are trespassed for 2 years and to leave the premises immediately</li></ol>						

	5	If the person stays or takes an unreasonable time to comply, call Police and advise call taker that person is refusing to leave after trespass
	6	Complete the details of service form
	7	Forward one copy to Police Obtain and retain a CCTV photograph of the person if available on file with the site notice
	8	Forward a copy of the notice, photo and completed security incident report to Council Security team at <a href="mailto:securityservices@aucklandcouncil.govt.nz">securityservices@aucklandcouncil.govt.nz</a>

## Output

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Incidents of trespass and the completion of documentation is correctly handled and reported to the relevant and responsible authorities

## Next steps

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The process ends here.

## Version control

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Owner	Security Manager		
Version no:	0.2	Last review date:	14/08/2015