

---

**REPORT 1**  
(1215/52/IM)

## **REVIEW OF THE ROAD ENCROACHMENT AND SALE POLICY AND FEES**

---

### **1. Purpose of Report**

To recommend that the Committee agree to change the fees associated with the Road Encroachment and Sale Policy and make minor amendments to the policy to be consulted on through the draft 2009-19 Long Term Council Community Plan (LTCCP) consultation.

### **2. Executive Summary**

This paper sets out the current and proposed fee changes for encroachments, highlights possible policy issues for future investigation and identifies minor proposed amendments to the Road Encroachment and Sale Policy. Any changes to existing fees and the policy made by the Committee will be consulted on as part of the LTCCP. The Committee will consider written and oral submissions ahead of recommending a final policy and list of fees to the Council. Fee changes, if agreed to, will take effect from 1 July 2009.

The fees associated with the policy have not been changed since 2001.<sup>1</sup> Consequently, the *application*, *administration* and *minimum charge* fees no longer cover the cost of officer work involved in administering encroachments and the *annual rental* fee has not been adjusted from \$10/m<sup>2</sup> for the past eight years. For this reason, recommendations are made to:

- increase the application, administration and minimum charge fees so that they cover the costs of officer time
- increase the annual rental fee by 12.5% - the cumulative Consumer Price Index (CPI) increase since the fees were last reviewed in 2004.

If the recommended fee changes are agreed, minor amendments will need to be made to the policy. The opportunity has also been taken to make additional minor amendments that will increase the policy's clarity and ensure it operates as intended.

### **3. Recommendations**

It is recommended that the Committee:

1. *Receive the information.*

---

<sup>1</sup> Fees were not changed as a result of the 2004 review.

2. *Agree, as part of the draft 2009-19 Long Term Council Community Plan, to consult on the following options for amending the fees associated with the Road Encroachment and Sale Policy:*
- *Increase the application fee to \$400*
  - *Increase the administration fee to \$65*
  - *Increase the annual rental fee for residential encroachments to \$11.25/m<sup>2</sup>*
  - *Increase the minimum annual rental charge for residential encroachments to \$90*
  - *Adjust residential annual rental fees on a yearly basis under officer delegation to reflect Consumer Price Index changes, without requiring the changes to be resolved by Council.*

*Note: All fees are exclusive of GST.*

3. *Agree to amend the Road Encroachment and Sale Policy as highlighted in Appendix 1 to this report and include reference to these proposed amendments in the draft LTCCP document.*
4. *Agree that the objectives, principles and fees associated with the Road Encroachment and Sale Policy be reviewed and reported back to the Strategy and Policy Committee by the end of 2010.*

#### **4. Background**

Encroachments enable property owners to enjoy the benefits of using public land, including subsoil and airspace, over road reserve.

The Road Encroachment and Sale Policy guides the Council's decisions, as land owner, for granting permission for property owners to use legal road for private use. The policy also permits the sale of road reserve (road stopping) in certain situations and outlines the process for doing this. A revised version of the policy, which highlights new content since the previous review, is attached as Appendix 1.

There are approximately 5,763 encroachment licence holders in Wellington City. The following table outlines the main categories of encroachments and the number of licences currently issued for each category:

<b>Encroachment Category</b>		<b>Land area</b>	<b>Number of licenses</b>	<b>Percentage of total licenses</b>
<b>Residential</b>	<b>Access-ways</b> (and land deemed unusable) - steps, driveways, bridges, cable cars, retaining walls	37,222m <sup>2</sup>	244	4.2%
	<b>Land</b> - no structures but public access is restricted due to planting, fences, hedges	56,859m <sup>2</sup> (6,711m <sup>2</sup> chargeable)	1455 (575 chargeable)	25.2% (10% of total)

<b>Structures</b> - such as parking structures, houses, decks, balconies; includes airspace and subsoil	79,304m <sup>2</sup>	3913	68%
<b>Commercial</b> - encroachments of any type used for commercial purposes	10,866m <sup>2</sup>	151	2.6%
<b>Total</b>	184,251m <sup>2</sup>	5,763	100%

For 2007/08 the Council received \$1.07 million from encroachment revenue and approximately a further \$46,000 in application and administration fees. The encroachment budget is currently contained within organisational costs. Accordingly encroachments are not subject to the Revenue and Financing Policy.

## 5. Discussion

### 5.1 Previous policy reviews

The Road Encroachment and Sale Policy was reviewed in 2001 with the following changes made:

- annual rental increased from \$4/m<sup>2</sup> to \$10/m<sup>2</sup> per annum
- application fee increased from \$50 to \$150
- administration fee increased from \$30 to \$50
- ability to sell and purchase road reserve included in the policy (road stopping).

In 2004 the policy was reviewed in order to meet the increasing demands of multi-apartment developments. The main changes made were:

- long-term leases introduced for airspace and subsoil encroachments
- shift to charging market rental for commercial encroachments
- airspace rental to apply cumulatively to structures.

### 5.2 2008 review of the policy and associated fees

Residential encroachment fees have remained the same since 2001.

A review of encroachment fees is due, particularly as the Council is no longer recovering the reasonable costs of officer time.

One of the principles established to guide the development of the 2009-19 LTCCP is the principle of “recognising the potential impost of new user charges on ‘affordability’”. The proposed fee changes are consistent with this principle as they are limited to adjusting:

- annual rental fees according to the Consumer Price Index (CPI)
- one-off fees to ensure full administration costs are recovered.

As such, officers believe the recommendations in this paper balance current affordability issues for property owners with the Council's need to cover the full cost of administering encroachments while continuing to receive an appropriate return on its investment.

Further options for making broader changes to the encroachments fees structure, based on how some of the policy's objectives and principles are applied, were considered by officers but not recommended at this time. These included:

- reducing the 50m<sup>2</sup> threshold before land encroachments are charged for to either 25m<sup>2</sup> or removing the threshold altogether
- adjusting the annual rental fee as a percentage of the average land market rental.

In line with the above-mentioned principle of affordability, it is recommended that the Committee delay consideration of these options until a broader review of the policy is undertaken. This review will be scheduled for report back to the Strategy and Policy Committee by the end of 2010.

### 5.2.1 Current fees

The current fees are applicable to road encroachments:

- all encroachments, even if not subject to an annual rental, are subject to an **application fee** of \$150. This fee applies to the cost of assessing the application and setting up the licence.
- an **administration fee** of \$50 applies if any change is made to an existing licence or lease, including a change to a new property owner.
- some types of encroachments attract an **annual rental** (conditions outlined in the below table)
- a **minimum charge** of \$35 applies if the encroachment area for which fees are payable is less than 3.5m<sup>2</sup>.

The following table outlines the fees applicable to the different categories of road encroachments:

Encroachment Category		Current fees applicable
Residential	<b>Access-ways</b> (and land deemed unusable) - steps, driveways, bridges, cable cars, retaining walls	<ul style="list-style-type: none"> <li>• Application and administration fees</li> <li>• No annual rental charged</li> </ul>
	<b>Land</b> - no structures but public access is restricted due to planting, fences, hedges	<ul style="list-style-type: none"> <li>• Application and administration fees</li> <li>• Annual rental charged for every square metre over 50m<sup>2</sup></li> <li>• Minimum charge applies</li> </ul>
	<b>Structures</b> - such as parking structures, houses, decks, balconies; includes airspace and subsoil	<ul style="list-style-type: none"> <li>• Application and administration fees</li> <li>• Annual rental charged for the whole encroachment area</li> <li>• Minimum charge applies</li> </ul>
<b>Commercial</b> - encroachments of any type		<ul style="list-style-type: none"> <li>• Application and administration fees</li> <li>• Market rental – individually assessed</li> </ul>

used for commercial purposes	• Minimum charge applies
------------------------------	--------------------------

### 5.3 Options for adjusting fees and annual rental

This section outlines the options and recommendations for changing encroachment fees for the Committee's consideration. All fees listed are exclusive of GST.

#### 5.3.1 One-off fees

Encroachment application and administration fees have remained unchanged since 2001. The following table outlines the options considered for adjusting these fees:

Type of fee	Current fee (Option 1)	Option 2	Option 3	Comments
<b>Application fee</b> Charged for new and amended encroachment applications. Assessing an application for an encroachment involves obtaining views from a range of officers, site visits and follow-up.	\$150	Full cost recovery: \$400	Phase in \$400 full cost recovery over 3 years  50% yr 1 75% yr 2 100% yr 3	Recommendation: Option 2. The fee was set at \$150 in 2001. The actual cost of processing applications is \$90 per hour (including overheads) and on average an application costs \$400. The current fee therefore represents 37.5% of the actual processing cost.  This will increase the revenue received by approximately \$37,500 per year (150 applications/year)
<b>Administration fee</b> - Applies when a change is made to a licence or lease, including change of property ownership.	\$50	Full cost recovery: \$65	n/a	Recommendation: Option 2. The fee was set at \$50 in 2001. The actual cost of administering changes to licences is approximately \$65. The current fee therefore represents 77% of the actual administration cost.  This will increase the revenue received by approximately \$9,000 per year (600 changes/year)

#### 5.3.2 Annual rental for residential encroachments

The current \$10/m<sup>2</sup> rate was set in 2001 as a 'fair and reasonable' rate that balanced the perceived public and private benefits of encroachments. It provides a reduced rental as it does not reflect the full market value payable on an average Wellington section, which based on the following figures is worked out as \$30/m<sup>2</sup>.

Wellington information	Average	Range
Section area	543m <sup>2</sup>	
Land value	\$272,000	
<b>Land value (\$/m<sup>2</sup>)</b>	<b>\$500/m<sup>2</sup></b>	<b>\$300-1300/m<sup>2</sup></b>
<b>6% market rental</b>	<b>\$30/m<sup>2</sup></b>	

Using the \$10/m<sup>2</sup> base-rate as the starting point, the following options consider the mechanisms that can be used to increase the annual rental rate.

**Option 1: CPI Adjustment on \$10/m<sup>2</sup>**

The cumulative Consumer Price Index (CPI) increase since 2004 (i.e. the date of the last review) has been 12.5%, which results in a \$11.25/m<sup>2</sup> annual rental fee.

The advantage of aligning the increase to the CPI is that the figure is a widely accepted inflationary guide, is updated regularly and easy to access.

**Option 2: Adjustment based on the value of the land**

The main disadvantage of using the CPI adjustment is that it is not directly related to the value of the land being used.<sup>2</sup> To this end, alternative figures associated with property can be used – such as the percentage increase of the value of house sales or the land value component of total property value. However, information on such increases is not as readily available (i.e. land value is now only being calculated every three years) and both of these options result in a significantly higher increase:

- percentage increase of house sale prices since 2004 – 41% or \$14.14/m<sup>2</sup>
- percentage increase in average land values since 2004 – 51% or \$15.10/m<sup>2</sup>.

The impact of both options 1 and 2 on property owners is shown in the following table, which compares the current annual cost of an average land and structure encroachment against the proposed cost for 2009/10:

Type/size of encroachment	Structure – 20m <sup>2</sup>	Land – 61m <sup>2</sup> (First 50m <sup>2</sup> not included)
<b>\$10/m<sup>2</sup> Threshold 50m<sup>2</sup></b>	\$200	\$110
<b>CPI \$11.25/m<sup>2</sup></b>	\$225 (incr. \$25.00)	\$123.75 (incr. \$13.75)
<b>Property Sales \$14.14/m<sup>2</sup></b>	\$282.20 (incr. \$82.20)	\$155.54 (incr. \$45.54)
<b>Land value increase \$15.10/m<sup>2</sup></b>	\$302 (incr. \$102.00)	\$166.10 (incr. \$66.10)

**Recommended Option**

Option 1 is recommended at this time as it recognises a fee increase is warranted due to the time lapsed since the last increase but does not place a heavy financial burden on property owners.

This option will increase the revenue received from annual rental by approximately \$107,518 (affecting 4,488 chargeable encroachments).

---

<sup>2</sup> The CPI does have a “Household component”, but this relates more to increases in housing and home ownership costs rather than the value of the land.

If this option is agreed to, officers also recommend that the policy be adjusted so that the review of the residential annual rental fee is tied to the CPI. This review is currently scheduled three yearly and requires Council resolution. Due to the easy accessibility of CPI information, and to smooth out fee increases over time, officers also recommend that the fee be adjusted annually rather than three yearly and be undertaken under officer delegation without needing annual Council sign-off.

### 5.3.3 Minimum charge on the annual rental fee

Currently a minimum annual rental of \$35 applies if the chargeable area is less than 3.5m<sup>2</sup>. This fee was set in 2001 and ensured that the Council recovered the annual administration cost of an encroachment licence.

#### Option 1: Status Quo

The status quo is not recommended as the fee no longer covers the cost of the time spent administrating an encroachment licence.

#### Option 2: Increase fee to \$90

Officers recommend that the minimum fee charged is increased to \$90 as it better reflects the actual cost incurred in administering individual encroachment licences.

This option increases the revenue received by approximately \$6,008 (it impacts on 170 licences holders).

This option requires the policy to be changed so that the minimum fee payable is not tied to a minimum encroachment area. Rather, when annual rental is payable on an encroachment and it comes to less than \$90, the fee chargeable will now be \$90.

### 5.3.4 Examples of impacts on residential encroachments

The following table outlines the potential financial impact on licence holders if the annual rental and minimum charge are increased as recommended. The table outlines the current smallest, largest and average-sized encroachments for both the land and structure encroachment categories and compares the current cost of those encroachments to those projected for 2009/10.

Chargeable Encroachments	2008/09	2009/10	Increase	% incr
Average land- 36m <sup>2</sup>	No charge	No charge	No charge	N/A
Smallest chargeable land – 51m <sup>2</sup>	\$35	\$90	\$55	157%
Largest land – 270m <sup>2</sup>	\$2,200	\$2,475	\$275	12.5%
Smallest parking structure – 0.1m	\$35	\$90	\$55	157%
Average structure – 20m <sup>2</sup>	\$200	\$225	\$25	12.5%

Largest structure – 300m <sup>2</sup>	\$3,000	\$3,375	\$375	12.5%
---------------------------------------	---------	---------	-------	-------

The overall impact on encroachments revenue, if all changes are agreed to, is as follows:

<b>Fee</b>	<b>Projected 2008/09 Revenue</b>	<b>Projected 2009/10 revenue</b>	<b>Increase (impact)</b>
Administration Fee	\$30,000	\$39,000	\$9,000
Application Fee	\$22,500	\$60,000	\$37,500
Land encroachment annual rental	\$67,110	\$75,493	\$8,388
Structure encroachment annual rental	\$793,040	\$892,170	\$99,130
+ increased minimum amount paid (\$90)	-	\$6,008	\$6,008
Commercial encroachment annual rental	\$247,172	\$247,172	\$0
<b>Total</b>	<b>\$1,159,817</b>	<b>\$1,319,843</b>	<b>\$160,026</b>

#### **5.4 Policy amendments**

The policy generally functions well and no significant changes are recommended at this stage. However, the opportunity can be taken to clarify the policy further by making a few minor amendments.

The policy is attached as Appendix 1, with the suggested amendments shown as tracked changes.

##### **5.4.1 Definition of ‘significant trees and vegetation’**

A change to the definition of significant trees and vegetation is proposed. The current definition lacks flexibility to address the varied nature of trees and other vegetation impacted by encroachments, for example vegetation may meet the measurements specified in the current definition, but not be significant. Similarly some vegetation may be significant and not meet the criteria. The proposed definition better reflects the elements that officers will take into account when considering an encroachment.

<b>Current definition</b>	<b>Proposed definition</b>
<p><b>Significant trees and vegetation</b> (guide only):</p> <ul style="list-style-type: none"> <li>trees or vegetation over two metres in height or with a circumference greater than 200mm measured at 1.45 metres from ground level</li> <li>areas of vegetation with a site coverage of greater than five square metres excluding pest plants as defined by the Wellington</li> </ul>	<p>Significant trees and vegetation are assessed by the Council on a case by case basis</p> <ol style="list-style-type: none"> <li>A range of factors are considered when assessing the significance of a tree and vegetation and include, but are not limited to the following: <ul style="list-style-type: none"> <li>Maturity, for example, height, diameter, in relation to typical sizes for that species</li> </ul> </li> </ol>

<p>City Council Pest Management Plan</p> <ul style="list-style-type: none"> <li>• existing roadside gardens or street trees formally planted and maintained by the Parks and Gardens Business Unit.</li> </ul>	<ul style="list-style-type: none"> <li>• Values, for example, ecological context, potential lifespan, indigenous/native to the region, amenity, aesthetic, rarity</li> <li>• Health, for example, form/structure, defects</li> <li>• Environmental situation, for example, root stability, wind zone</li> </ul> <p>2. Certain trees are noted in the District Plan as heritage trees and are protected under that Plan.</p>
--	---

#### **5.4.2 Access ways**

The fees table in the policy makes a distinction between access ways that follow the contours of the land and those that do not, implying that an application fee will not be charged if an access way follows the contours of the land. In effect all access way encroachments are treated the same way – an assessment is required for all applications and fees are charged. As such, the table has been amended to remove this distinction between types of access way encroachments.

#### **5.4.3 Other minor policy amendments**

- Section 3: Inclusion of “boatsheds” on road reserve back into the policy (it was removed in 2004 when it was agreed these would be managed through recreational leases. Eight boatsheds still remain on road reserve, however, and need to be covered in this policy)
- Section 5.4: Removal of the term of lease being stated as “66 years” in the policy (i.e. deemed to be the life of a building)
- Section 6: ‘Enforcement’ section has been renamed ‘Compliance and Monitoring’ as this better describes what the Council is trying to achieve in this area
- Deleting some outdated references.

#### **5.5 Consultation**

The proposed fees changes and minor policy amendments will be included in the draft 2009-19 LTCCP consultation. The Committee will consider written and oral submissions ahead of recommending the final fees and policy to Council. Changes in fees, should they proceed, will be effective from 1 July 2009.

### **6. Conclusion**

The fees associated with the Road Encroachment and Sale Policy have not changed since 2001. Increases to the application, administration and minimum charge fees are recommended for 2009/10 to ensure that the Council is recovering the cost of officer time for the work undertaken. A CPI adjustment is also recommended for the annual rent payable on residential encroachments.

The proposed fees changes and minor amendments to the policy will be consulted on through the LTCCP.

Contact Officer: *Adele Gibson, Senior Policy Advisor*

<b>Supporting Information</b>
<p><b>1) Strategic Fit / Strategic Outcome</b> The Road Encroachment and Sale Policy supports the Council's outcomes for the city. It helps make Wellington:</p> <ul style="list-style-type: none"><li>• More liveable</li><li>• Safer</li></ul>
<p><b>2) LTCCP/Annual Plan reference and long term financial impact</b> Fees associated with the Road Encroachment and Sale Policy are contained within organisational costs (as discussed in section 4 of the report)</p>
<p><b>3) Treaty of Waitangi considerations</b> N/A</p>
<p><b>4) Decision-Making</b> This is not a significant decision.</p>
<p><b>5) Consultation</b> <b>a) General Consultation</b> Fees changes and the minor amendments to the policy will be consulted on as part of the 2009-19 LTCCP process.</p> <p><b>b) Consultation with Maori</b> N/A</p>
<p><b>6) Legal Implications</b> N/A</p>
<p><b>7) Consistency with existing policy</b> The proposed changes to both fees and the policy are consistent with the Council's existing policies.</p>