
REPORT 3
(1215/52/IM)

REVIEW OF ROAD ENCROACHMENT AND SALE POLICY

1. Purpose of Report

This report recommends that the Strategy and Policy Committee (SPC) agree to a draft Road Encroachment and Sale Policy for consultation. It also recommends SPC agree to a new pricing framework for setting annual rental fees for certain types of encroachments.

2. Executive Summary

On 19 February 2009 SPC agreed that “the objectives, principles and fees associated with the Road Encroachment and Sale Policy be reviewed and reported back to SPC by the end of 2010.”

Having reviewed the policy, officers consider there are a number of areas where amendments would improve its clarity and allow better alignment of the Encroachment Policy with other Council policies and plans. Editorial changes are recommended to the policy document itself to improve it from the reader’s perspective.

On the specific areas of objectives and principles, officers consider that amendments to these sections would be beneficial. Amendments would ensure objectives, principles and criteria better align in a logical sequence to help both officers and property owners through the decision-making process.

On the issue of fees officers assessed three options for setting annual rental fees: status quo (a flat rate per square metre); a differentiated fee structure where rental fees are set in proportion to land values in a given area; or individual valuations of encroachment land.

While the existing flat rate policy is transparent, simple and relatively low cost to administer, it also creates large inequities between property owners and results in Council making very low returns on assets in some areas. A differentiated fee structure would be more complex, but is likely to result in less inequities and rental fees that more closely relate charges to the actual value of Council’s assets. Requiring individual valuations of all encroachments is considered impractical.

Officers recommend that SPC agree to consult on a differentiated fee structure as the preferred option. In some areas this would likely mean rental rates would fall or stay the same. In more expensive suburbs rental rates would likely rise.

Officers also recommend clarifying that “fences and hedges” are “structures” for the purpose of determining fees. This means proposed encroachments with fences or hedges would no longer be exempt from paying rental fees on the first 50 square metres of encroachment land. Around 650 encroachments currently receive the first 50 square metres of land free. While there is no precise information on the proportion of these that are fenced or hedged, officers estimate it may be around three-quarters.

Changes to the fee structure are recommended to apply:

- for new encroachment licences and leases, from the date Council agrees to the new policy and fee structure; and
- for existing licences and leases from 1 July 2011.

Finally, officers note that there is a compelling case for a more proactive approach to stopping non-strategic roads (and/or airspace and subsoil) and allowing property owners to purchase land, airspace or subsoil assets rather than rent them as present. The legislative processes for road stopping can be cumbersome and expensive. Officers recommend that central Government be encouraged to review these legislative processes, with a view to making road stopping more practical, while still protecting the broader public interest. Officers also recommend undertaking work on additional options for a more proactive approach to road stopping and sale of non-strategic assets, while protecting the broader public interest.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Agree to consult on the Draft Road Encroachment and Sale Policy 2010 (attached as **Appendix 3** to this report), including the following proposals for changes to fees:*
 - (a) *clarifying that “fences and hedges” are “structures” for the purpose of setting fees, meaning encroachments that are fenced or hedged would no longer be eligible for the first 50 square metres of land free;*
 - (b) *moving to a differentiated fee structure where annual rental fees are set as a proportion of average land values in a given suburb, and these are adjusted each three years in line with rateable land values;*
 - (c) *in respect of new airspace encroachment leases, obtaining registered valuations of proposed encroachments and charging a one-off fee covering the life of the lease;*
 - (d) *that changes to the fee structure should apply:*

- *for new encroachment licences and leases, from the date the Council agrees to the new Road Encroachment and Sale Policy and associated fee structure; and*
 - *for existing licences and leases, from 1 July 2011.*
3. *Note that consultation would occur over June-early July 2010 with oral hearings in late July and a final report to Strategy and Policy Committee in August 2010.*
 4. *Delegate to the Chief Executive and the Urban Development Portfolio Leader the authority to make any changes to the Draft Road Encroachment and Sale Policy required as a result of decisions of this committee, prior to it being released for consultation.*
 5. *Agree to the Mayor writing to the Minister of Local Government, seeking support for a review of the legislation concerning road stopping, with a view to making the process less cumbersome and expensive, while still protecting the broader public interest.*
 6. *Request officers to consider options for a more proactive approach to road stopping and associated land sales, while protecting the broader public interest, and to report to Strategy and Policy Committee when the results of consultation are reported back in August 2010.*

4. Background

On 19 February 2009 SPC agreed that “the objectives, principles and fees associated with the Road Encroachment and Sale Policy be reviewed and reported back to SPC by the end of 2010.” At the same time SPC agreed that a number of proposed fee and minor policy changes related to encroachments be included in the draft 2009-19 LTCCP process. Those changes were made as part of the LTCCP process and a revised Road Encroachment and Sale Policy was agreed in June 2009.

In the preparation of this report, officers:

- reviewed how the existing policy was functioning at an operational level;
- considered the “Objectives” and “Policy Principles” sections of the policy in terms of their internal consistency, balance, and aid to decision-making;
- reviewed application fees and rental fees; comparing rental fees to freehold land values throughout the city; and
- reviewed all aspects of the policy document from an editorial perspective.

5. Discussion

5.1 Objectives of the Encroachment Policy

The existing policy provides for a balance between the retention of unencumbered public land and the generation of an economic return from this Council-owned asset. It seeks to ensure that significant vegetation is retained, amenity values are protected, and encroachments are generally reversible. At the same time the policy has the objective of “achieving maximum possible return on the road reserve after taking the associated public and private benefits into consideration.”

The existing objective section lists a number of particular outcomes sought (for example safety, amenity, and economic return). An alternative approach is to generalise the objective statement and elaborate specific outcomes later in the policy. This would better accommodate the wide range of scenarios that arise in applications for encroachments. It is proposed that the objective be:

“to facilitate landowners making encroachments where, in the view of Council, these are expected to have overall net benefits; to establish a fee structure that reasonably reflects the degree to which benefits accrue privately, publicly or some combination of the two; and to aid the Council in meeting its legal obligations.”

The proposal incorporates the concept of “overall net benefit” but does not specify to whom those benefits must accrue. This is because there are times when encroachments provide benefits that are exclusively private, and other times when there is a high degree of public benefit also. Both these situations should be facilitated provided the detriments of an encroachment (to either individuals or the wider community) do not outweigh the overall benefits.

In reality assessing benefits and detriments is not an exact science; it requires a significant degree of judgement by officers. Such judgements will be made bearing in mind the agreed principles that underpin the policy (see the next section).

5.2 Principles

The principles guide decision-making and explain why some criteria, terms and conditions and rental fees were established. They guide all applications and decisions on encroachments, regardless of the nature (e.g. land, airspace, subsoil) or use (e.g. commercial or residential) of the encroachment.

The following principles are recommended:

- Recognising that unformed legal road is Council-owned land, the Council will seek to make an economic return from this asset where appropriate.
- Encroachments with greater public and/or private benefits than detriments should generally be accepted; those with greater detriments than benefits generally should not.

- Encroachments with low public but high private benefit, especially those that exclude public use, should generally incur higher rental charges.
- Encroachments for commercial properties should incur higher rental charges than non-commercial encroachments.
- People who are materially affected by a proposed encroachment should be consulted and their views considered when decisions are made.
- Encroachments that provide access to properties are broadly in keeping with the original purpose of legal roads.
- Encroachments should not interfere with any reasonably foreseeable future public uses of the particular unformed legal road or should be removable.
- The uses to which the encroached land are put should be in line, and preferably support, Council's other plans, policies and objectives.
- While not limiting the generality of the above principle, amenity values, cultural values, and significant ecological values should not be significantly degraded by the encroachment.
- Unformed legal road contributes positively to the overall look and feel of Wellington.
- Decisions on encroachments are at the Council's discretion; nothing in this policy requires officers to grant an encroachment or to reject an encroachment application.

The principles are made operational by applying "Criteria", "Terms and Conditions" and "Fees" to encroachments.

These principles reflect explicit statements or points in the current policy, with one new principle to state that officers have discretion to approve or not approve any encroachment proposal.

The current policy states that "*written consent is required from any affected property owners where a proposed encroachment is partially or fully on that property owner's legal road frontage*". This has created some misunderstanding as to the amount of discretion the Council actually has in its decision making. In reality the Council can approve encroachments even though another property owner has not provided written consent. The new principle, along with associated changes to the criteria section, should make this clear to property owners.

5.3 Criteria for Considering Road Encroachment Proposals

The criteria provide officers and applicants with a guide as to what type of proposed encroachment will and will not be agreed. It is proposed to express the criteria as "primary" and "secondary". Primary criteria would be that proposed encroachments:

- must not compromise the primary use of legal road to facilitate free pedestrian and traffic movement; and

- must not unreasonably interfere with a property owners' right of access to any road across the frontage between the road and the private property.

Any encroachment application would need to meet these primary criteria before it would be further assessed under the secondary criteria.

In the existing policy the secondary criteria are expressed in the negative (that is what an encroachment must not be). A new approach would be to construct criteria that help identify where the benefits and detriments of a proposal accrue. Recommended secondary criteria are contained in **Appendix 1**.

The decision to accept or decline an encroachment, assuming it has already met the two primary criteria, would depend on the assessed balance between the benefits and detriments of the proposal and would take into account any other significant issues identified (for example, any plans to develop the unformed legal road in the foreseeable future).

Consultation with affected people, especially those directly affected, would be used to inform this assessment and test the veracity of claims about a proposal's benefits and detriments. A new section on consultation has been added to the policy to clarify Council's expectations of property owners making encroachment proposals.

5.4 Terms and Conditions of Licences

The Council requires all encroachments to meet specified terms and conditions. No changes are recommended to these terms and conditions.

5.5 Encroachments onto or near Town Belt¹

The Road Encroachment and Sale Policy and the Town Belt Management Plan both have sections dealing with encroachments onto Town Belt land. However, the policies are different in each document, particularly in their treatment of existing encroachments onto Town Belt land. In summary the Town Belt Management Plan is more detailed and specific and provides for encroachments to be removed much more quickly than the current Road Encroachment and Sale Policy does. This could be addressed by making it clear that:

- an encroachment or part of an encroachment onto Town Belt land itself will be addressed under the Town Belt Management Plan;
- an encroachment or part of an encroachment onto unformed legal road adjacent to Town Belt land will be dealt with under the Road Encroachment and Sale Policy, and this will be the same treatment as the existing policy.

No changes are recommended to the policy dealing with encroachments onto reserve land or legal road adjacent to reserve land.

¹This section deals with lands held under the Town Belt Deed, that is inner Town Belt land.

5.6 Fees (Application and Annual Rental)

Application fees

Application fees were extensively reviewed in 2009. This included an evaluation of processing times and costs. New application fees were agreed in June 2009. These fees remain appropriate since there has been negligible movement in administrative costs since June 2009.

Annual Rental fees

Annual Rental fees were also reviewed and agreed in June 2009. The actual annual rental fee depends on three factors:

- the rental rate per square metre (currently a flat rate of \$11.25 excl GST for all residential encroachments)
- the area of the encroachment
- the nature of encroachments:
 - encroachments that do not restrict public access pay no fees
 - encroachments that restrict public access (say due to planting) but have no structures pay for the area in excess of 50 square metres
 - encroachments with structures for access only pay no fees
 - encroachments with structures (other than for access only) pay for each square metre of the encroachment
 - minimum charges also apply.

Fees payable depending on the nature of encroachments

The setting of fees is underpinned by the principle that as the benefits of an encroachment move from largely public to a mix of public and private and then to largely private benefits, fees should increase accordingly.

The current policy - that fees change depending on the nature of an encroachment - broadly follows this principle. While there will be exceptions, the current policy means that fees generally increase as the level of exclusive private benefit increases. Consequently, changes are not recommended to this aspect of the policy. One exception, however, is clarifying that “fences and hedges” are “structures” for the purpose of setting fees (discussed below).

Fences and hedges and the 50 square metres free policy

The Policy currently provides ‘50 square metres free’ for encroachments with access restrictions but no structures on them. This is justified since without structures many property owners will accrue relatively little private value from an encroachment and the encroachment often provides public benefits.

An issue officers have identified is the inconsistency between the definition of “structures” (in section 3 of the Policy) which includes “fences and hedges”, and

the policy on '50 square metres free' which implies that fences and hedges are not structures. It is recommended that this be addressed by specifying that the '50 square metres free' does not apply where a fence or hedge is on an encroachment, because:

- fences and hedges are designed to exclude public access and create a high degree of exclusive private use
- the land is Council-owned and the Council is entitled to a reasonable rate of return, in the public interest, especially where there is a high degree of public exclusion from the land
- expert valuation advice is that there is “definitely value to the property owner” from fenced encroachments and [under existing rental fee arrangements] this is typically being reflected in the price the property owner receives when they sell their property even though the encroachment licence is not an interest in land.

Around 650 encroachments currently receive the first 50 square metres free. While there is no precise information on how many of these have fences or hedges, officers estimate it is around three quarters. If so, the policy, if agreed, would add approximately \$400,000 per year² to the rental income from encroachments.

Residential rental rate per square metre

The current rental rate for residential encroachments (\$11.25 per square metre) is generally low compared to what would be a market rental rate for land. For example, in some suburbs it is just 10 to 20 percent of the estimated market rental rate. This combined with other factors, means that in many cases the Council is receiving an extremely low rate of return on the capital value of its assets.

Appendix 2 provides average land values and estimated market rental rates³ by suburb across Wellington city. It also provides the percentage that the current encroachment rental rate is of the estimated market rental rate for each suburb.

The information shows that the current policy creates a number of inequities. For example, a resident with an encroachment in Thorndon would pay, on average, just 12 percent of the market rental price for that land. A resident in Tawa on the other hand would be paying 86 percent of the market rental price for their encroached land.

This has financial implications beyond just annual rental fees. Expert advice is that the net value of encroachments is often capitalised and incorporated into the value of properties when they are sold. The degree to which this occurs depends partly on the rental fees payable. As encroachment rental rates tend towards market rental rates, buyers will discount property values accordingly.

² This assumes new differential fee rates are also agreed.

³ Estimated market rental rates were calculated by multiplying the capital value of freehold land per square metre by 6 percent.

The effect is that property owners in expensive suburbs around central Wellington and Seatoun can expect that the value of the encroachment land will be incorporated into the price they receive for their properties. On the other hand property owners in areas like Tawa would see little or no value added to their properties as a result of having encroachments.

Addressing these issues is challenging. Officers have assessed three options for setting the residential encroachment rental rate per square metre:

- Status quo – a flat rate of \$11.25 per square metre across all suburbs. The rate was last set in mid-2009. It is adjusted annually by officers in line with the Consumer Price Index. It is also reviewed every three years as part of the LTCCP process.
- A differentiated fee structure where the rental rate per square metre is set in proportion to land values in a given area/suburb. The rate per square metre would be set at a discount to market rental rates, recognising that legal road is less valuable than normal freehold land due to the uncertainties and encumbrances on it.
- Individual valuations of encroachments, with rental rates set as a percentage of the value of the encroachment land.

Each option has strengths and weaknesses.

The **status quo** is transparent, simple and relatively low cost to administer. However, it also creates significant inequities between property owners in different suburbs, and indeed within suburbs. This is because the rental rate is set somewhat arbitrarily and does not necessarily relate to the value any given encroachment adds to a property. This approach also leads to some very poor returns on Council's assets, especially in higher value areas.

A **differentiated fee** policy based on average rateable land value by suburb would be more complex to administer than the status quo. It would likely lead to a number of disputes over the validity of the differential fees, and in more expensive suburbs it could put total fees up significantly.

The Council would need to agree a discount factor to apply to estimated market rental rates. Theoretically, the discount factor should vary on a case-by-case basis since it depends on the marginal value an encroachment adds to a specific property. However, such an approach is impractical to apply across 5,700 encroachment licences. It is recommended that, as a base assumption, the discount factor be set so that encroachment rental rates are approximately 50 percent of the estimated market rental rate for a suburb. To reduce administrative burden and complexities, suburbs with similar land values could be grouped together and a single rental rate applied across these.

In some areas this approach would likely mean rental rates would fall or stay the same. In more expensive suburbs rental rates would likely rise. Appendix 2 provides details of a proposed pricing structure, for consultation, using average land prices across suburbs as the basis of setting rental rates. Rental rates

would not be adjusted annually in line with CPI, but instead would be adjusted each three years in line with rateable land values.

An alternative would be to base the rental rate on the rateable land value of the adjacent property. However, this approach would create wide and unjustified variations in rental fees even between neighbouring properties with similar encroachments of similar value. This is because the per square metre value of land on a section can vary widely depending on the area of that section, and this may bear little relationship to the value of encroachment land.

The differentiated fee approach would remove many of larger inequities inherent in the status quo. It would also result in returns on Council assets that are more appropriate and closely aligned to the value of those assets. Balanced against these benefits are the administrative complexities, possible disputes and likely fee increases in some suburbs.

Under the **individual valuation** approach valuers would be asked to assess the capital value an encroachment adds to a property (taking into consideration any reduced land values due to uncertainties and encumbrances on legal road). Rental rates would then be set at a percentage, say 6 percent, of the capital value of the encroachment. While theoretically attractive, this approach has the major drawback of expense. Valuers would need to make individual and complex assessments perhaps costing many hundreds of dollars each. These would need to be updated regularly. Other drawbacks include it would be administratively difficult, and the fact that valuers may have little transaction information upon which to base valuations.

On balance officers **recommend the differentiated fee** structure where residential encroachment rental rates are based on a 50 percent discount of estimated average market rental rates in a given area. It is estimated that this change in policy would add around \$930,000 to the rental income from encroachments each year once fully implemented.

Balconies

Encroachments by balconies into the airspace above legal road are generally dealt with by providing encroachment leases. Unlike licences, leases create an ongoing interest in the airspace and remain in place for the life of the building (though they can be terminated in some circumstances). Currently, airspace leases are charged for at the same flat fee as encroachment licences (\$11.25 per square metre) even though leases are more enduring than licences. In addition, balconies can add thousands of dollars a square metre to the value of apartments; a value that is not reflected in the current rental rate. Finally, there have been issues with buyers of apartments becoming aware of annual rental fees after they have purchased a property then disputing their obligations to pay the fee.

This situation could be addressed in future by obtaining a registered valuation of any proposed airspace encroachment lease, then charging developers a one-off rental fee to cover the lifetime of the lease. This would allow the lease fee to be specific to the proposed development, rather than using an averaged rental

rate per square metre (which is more applicable to land licences than airspace leases). It would also avoid future purchasers of apartments being surprised by obligations to pay rental fees.

Existing balconies could also be offered the option of a single fee to cover the remaining life of the lease. Property owners that do not wish to take up this option would be subject to the existing terms and conditions, but with an updated rental rate applicable to their particular area.

Timing of changes

It is recommended that any changes to the fee structure apply:

- for new encroachment licences and leases, from the date Council agrees to the new policy and fee structure; and
- for existing licences and leases from 1 July 2011.

5.7 Unformed Legal Roads in Rural Areas

The existing policy does not cover legal roads in areas zoned as rural in the Wellington District Plan. No changes are recommended to this position, because:

- Council derives significant benefit (for example weed control and management of fire risk) from having unformed legal road in rural areas under active management;
- The administrative costs involved in identifying and enforcing licensing would be significant for relatively little gain (noting that the per square metre annual rental rate would logically have to be much lower in rural areas than in urban areas⁴);
- It is largely impractical to exclude stock from using unformed legal road without Council incurring significant cost, especially for fencing.

5.8 Other editorial and minor amendments

A number of other minor editorial changes are also recommended to the July 2009 policy document. These are to reduce the length of the policy, make it easier to follow and/or correct minor errors. A recommended draft policy document is attached as **Appendix 3**.

5.9 Road Stopping

Many of the issues identified during this review could be addressed if - where legal road will not be required for another purpose - it could be more easily “stopped” and sold. This would provide legal certainty to property owners, reduce administrative burden and costs, and allow the Council to realise otherwise undervalued assets.

⁴ For example, hill country grazing land might generate an annual rental income of \$300 to \$500 per hectare. This equates to just 3 to 5 cents per square metre.

The legislative processes for road stopping are generally long and expensive. The legislation is a major impediment to pursuing a more rational use of legal road not required for other public purposes.

It is recommended that the Mayor writes to the Minister of Local Government seeking support for a review of the legislation concerning road stopping, with a view to making the process less cumbersome and expensive, while still protecting the broader public interest.

In addition, it is recommended that officers undertake further work on options for a more proactive approach to road stopping and related land sales of non-strategic assets, and report back to SPC on this work in August 2010.

6. Conclusion

Officers recommend a number of amendments to the Road Encroachment and Sale Policy. These are generally modest changes designed to improve the Policy's clarity and allow better alignment of the Encroachment Policy with other Council policies and plans. Editorial changes are also recommended to improve it from the reader's perspective.

Some significant changes are recommended to the fee structure including:

- Moving to a differentiated fee structure where rental fees are set in proportion to average land values in a given area.
- Clarifying that "fences and hedges" are "structures" for the purpose of setting fees.
- For new airspace encroachment leases, obtaining commercial valuations and charging a one-off fee covering the life of the lease.

Consultation on the draft Policy would occur over June and early July 2010, with oral hearings in early late July and a final report to Strategy and Policy Committee expected in August 2010.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The Road Encroachment and Sale Policy supports the Council's Transport Strategy by maintaining options for future use of the unformed legal road. It also supports the Urban Development Strategy by facilitating development and ensures Council unformed legal road is managed consistent with other Council policies and plans.

2) LTCCP/Annual Plan reference and long term financial impact

The Road Encroachment and Sale Policy is noted under "Fees and User Charges" in the LTCCP. Changes are recommended to the rental fee rate commencing in July 2011. No other administrative fee changes are recommended.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications arising from the proposed draft policy.

4) Decision-Making

The report does not propose significant decisions or major changes to the existing policy. Where changes to the charging regime are proposed officers recommend these commence from the start of the 2011-12 financial year.

5) Consultation

a) General Consultation

Officers recommend the draft policy be put out for public consultation over June-early July, with oral hearings in late July and a final report to SPC in August 2010.

b) Consultation with Maori

Mana whenua would be consulted on the proposed draft policy as part of the general consultation process.

6) Legal Implications

The draft policy has been reviewed by legal advisors. General Counsel has also been consulted.

7) Consistency with existing policy

The recommendations in this report are broadly consistent with the existing policy.

APPENDIX 1

Secondary Criteria for Assessing Encroachment Proposals

The following secondary criteria for assessing encroachment applications are recommended:

- What benefits would the proposed encroachment provide? For example to what extent is it likely to:
 - provide vehicle or pedestrian access to a property
 - enhance outdoor living, recreation, private or public amenity values
 - improve public safety and street use – for example provide off-street parking
 - improve security – for example through lighting or ‘eyes on the street’
 - improve biodiversity
 - support any strategic, policy or plan objectives of the Council
 - improve sense of vibrancy
 - generate a rental income for the Council
 - encourage development and/or economic activity
 - provide other benefits.

- What would be the detriments of the proposed encroachment? For example to what extent is it likely to:
 - degrade significant vegetation
 - degrade streetscape amenity values
 - degrade significant public or private vistas
 - degrade any other amenity, cultural, environmental, or heritage values
 - reduce safety
 - exclude the public from using the relevant land
 - be difficult or necessary to reverse or remove in the future. This is assessed based on the likelihood that the encroachment would cause an impediment to any foreseeable use of the unformed legal road space
 - unreasonably impede the use of the land by those with rights to it such as utility companies
 - create other detriments.

In addition Council may consider other factors, including:

- Are there already similar encroachments in the vicinity?
- Can the proposal be reasonably accommodated on private land (particularly applicable where no rental income would be generated from the proposed encroachment)?
- Any other relevant factors.

APPENDIX 2

Appendix 2: Market land values, rental rates and proposed new encroachment rental rates by suburb

	Freehold land value (per m ²)	Market rental rate (6% of freehold value)	Percentage that \$11.25 is of market rental rate	Encroachment rental rate equal to 50% of market rental rate	Proposed encroachment rental rate per square metre for groups of suburbs
Ohariu*	\$89	\$5.32	212	\$2.66	Group One: \$9
Makara*	\$107	\$6.42	175	\$3.21	
Glenside*	\$153	\$9.20	122	\$4.60	
Grenada North*	\$178	\$10.69	105	\$5.35	
Makara Beach	\$203	\$12.15	93	\$6.08	
Tawa	\$219	\$13.14	86	\$6.57	
Ngauranga	\$224	\$13.42	84	\$6.71	
Grenada Village	\$234	\$14.03	80	\$7.01	
Crofton Downs	\$265	\$15.90	71	\$7.95	
Broadmeadows	\$268	\$16.07	70	\$8.03	
Newlands	\$272	\$16.30	69	\$8.15	
Mornington	\$288	\$17.27	65	\$8.64	
Woodridge	\$317	\$19.02	59	\$9.51	
Paparangi	\$317	\$19.05	59	\$9.52	
Owhiro Bay	\$319	\$19.17	59	\$9.58	
Churton Park	\$323	\$19.38	58	\$9.69	
Johnsonville	\$324	\$19.47	58	\$9.73	
Kingston	\$328	\$19.69	57	\$9.85	
Ngaio	\$338	\$20.25	56	\$10.13	Group Two: \$11.25
Wilton	\$338	\$20.26	56	\$10.13	
Strathmore Park	\$350	\$21.01	54	\$10.51	
Karori	\$375	\$22.53	50	\$11.26	
Houghton Bay	\$387	\$23.23	48	\$11.62	
Vogeltown	\$394	\$23.62	48	\$11.81	
Southgate	\$394	\$23.62	48	\$11.81	
Moa Point	\$395	\$23.69	47	\$11.84	
Melrose	\$396	\$23.78	47	\$11.89	
Rongotai	\$445	\$26.71	42	\$13.35	Group Three: \$15
Island Bay	\$451	\$27.08	42	\$13.54	
Miramar	\$464	\$27.87	40	\$13.93	
Maupuia	\$480	\$28.82	39	\$14.41	
Brooklyn	\$486	\$29.18	39	\$14.59	
Highbury	\$520	\$31.18	36	\$15.59	
Khandallah	\$520	\$31.22	36	\$15.61	
Breaker Bay	\$525	\$31.51	36	\$15.75	
Aro Valley	\$548	\$32.87	34	\$16.44	
Northland	\$549	\$32.93	34	\$16.46	
Wadestown	\$562	\$33.74	33	\$16.87	Group Four: \$20
Kilbirnie	\$615	\$36.89	31	\$18.44	
Lyall Bay	\$615	\$36.89	31	\$18.44	
Kaiwharawhara	\$643	\$38.59	29	\$19.30	
Hataitai	\$702	\$42.14	27	\$21.07	
Berhampore	\$712	\$42.71	26	\$21.36	

APPENDIX 2

Karaka Bays	\$813	\$48.75	23	\$24.38	Group 5: \$25
Newtown	\$862	\$51.72	22	\$25.86	
Kelburn	\$918	\$55.09	20	\$27.54	
Roseneath	\$1,010	\$60.59	19	\$30.29	Group 6: \$30
Seatoun	\$1,024	\$61.42	18	\$30.71	
Mt Cook	\$1,030	\$61.81	18	\$30.91	
Pipitea	\$1,191	\$71.45	16	\$35.72	
Te Aro	\$1,250	\$75.00	15	\$37.50	
Wellington Central	\$1,271	\$76.25	15	\$38.12	
Thorndon	\$1,585	\$95.12	12	\$47.56	
Mt Victoria	\$1,672	\$100.29	11	\$50.15	
Oriental Bay	\$2,833	\$169.96	7	\$84.98	

*Average value of land per square metre is likely to be somewhat distorted in these suburbs due to some very large sections and/or lifestyle blocks.

Similarly it is possible that in some suburbs average land values are somewhat distorted because of a prevalence of small sections and dwellings occupying a high proportion of land area.

DRAFT

ROAD ENCROACHMENT AND

SALE POLICY

2010

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1. INTRODUCTION

Wellington's topography is unique with steep hills and little flat land. Its street layout was largely derived from English town planning processes. Often it 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 and there are far fewer formally planted street trees and berms compared with cities such as Christchurch and Auckland. Some of the planned roads were never formed and are still bush or just small foot walkways. Other roads are only partially formed.

The Council owns more than 660 kilometres of legal road around the city. This is made up of unformed road, footpaths and actual formed road. The Council believes its unformed road, the airspace above roads, and the subsoil below roads can be utilised for activities other than roading provided this does not unreasonably interfere with existing or possible future uses of the legal road. Because the land and the airspace above it is owned by the Council, people wishing to use it for private purposes may need to get authorisation (an encroachment licence or a lease) from the Council. Wellingtonians already hold around 5,800 road encroachment licences mainly for parking, access or outdoor living.

This policy describes when a licence or lease is required and the criteria the Council will use to decide whether to grant one. It also describes the terms and conditions and fees applicable to licences and leases for encroachments under, on or above legal roads.

Finally, there may be cases where it becomes clear that an area of legal road will never be needed for actual roading. This policy describes the process that must be gone through if the Council, usually at the request of a nearby landowner, considers that a legal road should be stopped and the land sold.

2. OBJECTIVES

This Policy aims to provide a framework for consistent decision-making in respect of encroachments under, on or above legal road in Wellington City. The objectives of the policy are to facilitate property owners making encroachments where, in the view of Council, these are expected to have overall net benefits; to establish a fee structure that reasonably reflects the degree to which benefits accrue privately, publicly or some combination of the two; and to aid the Council in meeting its legal obligations.

3. DEFINITIONS

In terms of this Policy, the following definitions apply.

Access ways include driveways, bridges, cable cars or stairs that cross legal road and provide access to private property.

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

Legal road has the same meaning as in the Local Government Act 1974⁵. In summary it covers the:

- carriageway (formed road)
- footpath including kerbs and channelling
- land that is legally road but is not currently formed as carriageway or footpath (sometimes referred to as 'unformed road' or a 'paper road')
- subsoil below the legal road
- airspace above the legal road.

Private use covers both individual and commercial use and refers to situations where those that directly benefit can be identified, for example, the owner of a garage or balcony. Residential and commercial categories are determined by the property's ratepayer status.

Public benefit occurs when those that directly benefit cannot be identified or cannot be excluded from using the service, for example pedestrian or vehicle access.

Restricted public access and enclosed areas are where a deliberate action causes a restriction that provides an associated private benefit. This includes circumstances where there is:

- exclusive private use of a portion of legal road, or
- a barrier, including a visual barrier, that can be reasonably interpreted as restricting access by the general public.

Road encroachment is where either public access to legal road is restricted or a deliberate action causes an area of legal road to be used for private use (exclusive or otherwise).

A **road encroachment lease** is a property right to authorise exclusive occupation of airspace or subsoil. It creates an interest in the airspace or subsoil for the lease term, subject to compliance with the lease terms (such as payment of rental).

A **road encroachment licence** authorises a right to occupy land. A licence does not provide an interest in the land and can be revoked on one month's notice.

Road stopping is where the status of legal road is changed into freehold land in situations where it is clear that the legal road is surplus to the Council's operational requirements. This change enables the Council to sell the land.

⁵ The relevant sections of the 1974 Act were not repealed when the 2002 Act was passed.

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Structure in respect of legal road includes any kind of improvement such as:

- parking structures, for example garages, car pads, car decks, car ports, boatsheds
- access structures, for example driveways, stairs, retaining walls, cable cars, gates, covered access ways
- house, for example any part of a primary or secondary building, eaves, porches, decks, balconies, conservatories
- boundary markings, for example walls, fences, hedges.

Unformed road is any land that forms part of the legal road but is not used as a carriageway or footpath. It is commonly called road reserve.

4. POLICY PRINCIPLES

The Council is empowered to authorise any property owner ('the encroacher') to occupy an area of legal road owned and controlled by the Council through the Wellington Consolidated Bylaw 2008: Part 5 – Public Places. Council (as landowner of legal roads) has the discretion to consent to an encroachment and, if approved, provide an encroachment licence or lease to the encroacher in accordance with this Policy.

Decisions on encroachments are at the Council's discretion; nothing in this policy requires officers to grant an encroachment or to reject an encroachment application. The following principles are taken into account when assessing whether or not to allow an encroachment:

- Recognising that road reserve is Council-owned land, the Council will seek to make an economic return from this asset where appropriate.
- Encroachments with greater public and/or private benefits than detriments should generally be accepted; those with greater detriments than benefits generally should not.
- Encroachments with low public but high private benefit, especially those that exclude public use, should generally incur higher rental charges.
- Encroachments for commercial properties should incur higher rental charges than non-commercial encroachments.
- People who are materially affected by a proposed encroachment should be consulted and their views considered when decisions are made.
- Encroachments that provide access to properties are broadly in keeping with the original purpose of roading reserves.
- Encroachments should not interfere with any reasonably foreseeable future public uses of the particular road reserve or should be removable.
- The uses to which the encroached land are put should be in line, and preferably support, Council's other plans, policies and objectives.
- While not limiting the generality of the above principle, amenity values, cultural values, and significant ecological values should not be significantly degraded by the encroachment.
- Road reserve contributes positively to the overall look and feel of Wellington.

5. KEY ASPECTS OF THE POLICY

5.1 What this policy covers

This Policy covers all occupation or exclusive private use of legal road within Wellington City with the following exceptions:

- activities on formed footpaths and formed roads. The Footpath Management Policy provides a framework for the use of footpath areas for retail activities. Activities on formed road are subject to other legislative, regulatory and policy requirements.
- legal road within areas zoned as **rural** in the Wellington City District Plan.
- verandahs that are specifically designed and used to provide cover for pedestrians. These are covered by District Plan requirements.
- activities and structures of utility companies where these relate to specific statutory rights that allow them to utilise legal road to provide various utility services.

This Policy applies to existing and proposed buildings.

5.2 When is a licence or lease needed?

Any property owner seeking to occupy or use legal road for exclusive private purposes must apply to the Council as landowner of the road.

A **licence** is required if there are structures or any form of public access restriction associated with the road encroachment. This includes:

- the use of legal road for garages, car pads, decks, gardens and commercial purposes
- access structures such as stairs that do not follow the contour of the land, driveways, bridges, cable cars and retaining walls
- the use of airspace above legal road for eaves, balconies or similar structures (unless an airspace lease has been obtained)
- the use of subsoil for private purposes (unless a subsoil lease has been obtained).

The option of a **lease** is available for airspace and subsoil encroachments only. Where these types of encroachments are proposed for longer-term use, the lease option can provide property owners with greater certainty about the continuity of the encroachment for a specified period of time.

There is also the option of seeking to have a legal road stopped so that the landowner may purchase the land. This process is subject to specific legislative requirements and is relatively expensive. It is described in section 7 and Annex 2 of this policy.

If in doubt as to whether an encroachment licence or lease is needed you should contact the Council (see Section 8: Further Information).

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5.3 When is a licence not needed?

A road encroachment licence is not required for:

- access ways that follow the natural contours of the land provided there are no structures (with the exception of basic hand/safety rails) or public access restrictions. However, the prospective occupier of legal road is still required to apply to the Council (as landowner) for consent and any necessary regulatory consents⁶.
- maintaining unformed areas of legal road. Residents are encouraged to maintain and beautify these areas in their streets. However, residents should refer to the Council's Tree Maintenance and Road Reserves Policies and may wish to take advantage of the Council's services such as selective vegetation removal and pruning, growth cutting on banks, free plants, weed spraying and noxious weed control. These areas cannot have structures, such as fences or hedges put on them or features that may reasonably be interpreted as restricting public access.

5.4 Who can apply?

Any property owner who has legal road adjoining their property may apply for a road encroachment licence. In some cases a property owner may apply when the legal road is not adjoining but is in the vicinity of that owner's property.

5.5 Criteria for evaluating road encroachment proposals

The Council will apply criteria to help evaluate whether a proposed encroachment should be approved and the fee structure appropriate to the encroachment (see section 5.9 Fees).

The criteria are divided into primary and secondary criteria. Primary criteria are legal factors that must be considered by Council when considering an encroachment application in accordance with Part 5 clause 17.2 of the Wellington City Consolidated Bylaw (2008). They are:

- a proposed encroachment must not compromise the primary use of legal road to facilitate free pedestrian and traffic movement; and
- a proposed encroachment must not **unreasonably** interfere with a property owners' right of access to any road across the frontage between the road and the private property.

⁶ Examples of other regulatory consents that might be required include a Resource Consent and/or Building Consent.

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Secondary criteria provide a framework for evaluating the overall benefits and detriments of a proposal and where those benefits and detriments are likely to fall. Secondary criteria are:

- What benefits would the proposed encroachment provide? For example to what extent is it likely to:
 - provide vehicle or pedestrian access to a property
 - enhance outdoor living, recreation, private or public amenity values
 - improve public safety and street use – for example provide off-street parking
 - improve security – for example through lighting or ‘eyes on the street’
 - improve biodiversity
 - support any strategic, policy or plan objectives of the Council
 - improve sense of vibrancy
 - generate a rental income for the Council
 - encourage development and/or economic activity
 - provide other benefits.

- What would be the detriments of the proposed encroachment? For example to what extent is it likely to:
 - degrade significant vegetation
 - degrade streetscape amenity values
 - degrade significant public or private vistas
 - degrade any other amenity, cultural, environmental, or heritage values
 - reduce safety
 - exclude the public from using the relevant land
 - be difficult or necessary to reverse or remove in the future. This is assessed based on the likelihood that the encroachment would cause an impediment to any foreseeable use of the road reserve space
 - unreasonably impede the use of the land by those with rights to it such as utility companies
 - create other detriments.

In addition Council will consider other factors, including:

- Are there already similar encroachments in the vicinity?
- Can the proposal be reasonably accommodated on private land (particularly applicable where no rental income would be generated from the proposed encroachment)?
- Any other relevant factors.

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Significant vegetation will be assessed by the Council on a case by case basis. A range of factors indicate that vegetation is significant including:

- trees or vegetation over two metres in height or with a circumference greater than 200mm measured at 1.45 metres from ground level
- areas of vegetation with a site coverage of greater than five square metres excluding pest plants as defined by the Wellington City Council Pest Management Plan
- existing roadside gardens or street trees formally planted and maintained by the Parks and Gardens Business Unit
- officers will also consider other values including maturity, ecological context, potential life span, whether the vegetation is indigenous to the region, its rarity, health and aesthetic quality.
- certain trees are noted in the District Plan as heritage trees and are protected under that Plan.

The Council's decision to provide an encroachment or not depends on an overall assessment of a proposal's benefits and detriments as well as other factors it may choose to consider, such as those noted above. In many cases judgements will need to be made not only on what the benefits and detriments of a proposal might be, but also the magnitude of those benefits and detriments and the balance between them.

Critically, the views of those people potentially affected by the proposal, especially those directly affected, will be used to inform Council's decision-making (see section 5.6 Consultation with Affected Parties).

5.6 Consultation with affected parties

Council needs to be able to understand and assess the effects a proposed encroachment could have on other property owners. The Council therefore will want to know the views of property owners in the vicinity of the proposed encroachment who could be materially affected by it. This is especially so in cases:

- where an adjoining property owner believes their significant vistas and/or amenity values could be affected by a proposed encroachment
- where the proposed encroachment covers another property owner's legal road frontage.

The Council will also want to be assured that the views of third parties are based on accurate information about the proposal.

If an adjoining property owner who may be affected by a proposed encroachment provides written consent to the proposal, the application will be considered by Council on the basis that that adjoining property owner is not affected. If no written consent is provided then the Council will consider any comments raised by that property before deciding whether to grant an encroachment. However, the Council retains the ultimate discretion as to whether to agree to any encroachment, guided by the principles in this policy.

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5.7 Terms and conditions of encroachment licences and leases

5.7.1 Licences

An encroachment licence is only issued to a property owner and cannot be transferred. It may be revoked by the Council by giving one month's notice to the licence holder. This means applicants for road encroachment licences need to consider the risk and the associated implications if their licence ever needs to be revoked.

Where certainty over the continuation of an encroachment is required, other options may be more appropriate. These include purchasing the land (see section 7: Sale of Legal Road) or obtaining a lease - in the case of airspace and subsoil encroachments only.

When a property is sold any encroachment structure is deemed to also be "sold" and the new property owner becomes fully responsible for the maintenance of the encroachment. The Council must be notified about the change of ownership. A new encroachment licence will be issued to the new owner following notification, provided there are no outstanding issues with the encroachment. This means:

- any structure should be in good repair
- all fees should have been paid
- the selling owner must not be in breach of the terms of the licence
- the licence does not have any special conditions, for example, special termination clauses (also see section 5.8 below).

In addition, any encroachment licence that is issued to a property owner will be recorded on the Land Information Memorandum (LIM) for that property. Please note, however, the encroachment structure is not recorded on the Certificate of Title for the property.

Should an encroachment licence holder want to change the use or the structure of their encroachment they must apply to the Council (as landowner) for written consent.

Other special conditions may be applied to a licence on a case-by-case basis.

5.7.2 Special conditions for airspace licences

Airspace encroachments occur when a building has a structure, such as a balcony, façade, dwelling, conservatory or eaves that encroaches into airspace above legal road. These are usually for residential purposes but there are also a limited number of commercial airspace encroachments, for example signage and café extensions. In addition to the above terms and conditions, airspace encroachment licences also include:

- proof of public liability insurance to the value of \$100,000 must be provided annually
- the signature of the body corporate is required on the encroachment licence when a body corporate is part of the ownership structure of a building
- where there are several separate airspace encroachments above each other belonging to the same owner, for example several balconies and eaves, the rental will be assessed on the cumulative encroachment area.

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5.7.3 Airspace and subsoil leases

The Council may allow more permanent - that is difficult to remove - structures into airspace above or subsoil below a legal road by issuing a lease for that airspace or subsoil. The key differences between licences and leases are that leases:

- provide the lessee with a legal interest in the airspace or subsoil
- will be for the life of a building
- will be revocable with six months' notice from the Council if the Council requires the land for its own use or an alternative use
- will be reissued to a new property owner for the outstanding term of the lease at the date of any property transaction.

With respect to leases for **airspace** the following terms and conditions will apply:

- The airspace encroachment must not be:
 - for wet room use such as a kitchen, bathroom or laundry
 - more than 25 percent of the room it is part of
 - instrumental to the functioning of the apartment or building it is attached to. If the encroachment was to be removed the room must still function for its intended purpose.
- Other terms and conditions for airspace leases are similar to those of an airspace encroachment licence (see 5.7.2 above).

Other special conditions may be applied to an airspace or subsoil lease on a case-by-case basis.

5.8 Encroachments onto or near Town Belt or other Reserve land

Historically, the Council granted licences for encroachments that were located partially on legal road and partially on land held under the Reserves Act or Town Belt Deed. The protection of these types of land is being more rigorously pursued. This has implications for both Town Belt and Reserve land itself and any legal road adjacent to such lands.

Where an encroachment onto legal road is proposed and the adjacent land is subject to the Town Belt Deed or is Reserve land, the provisions Town Belt Management Plan, relevant reserve management plan or Reserves Act will also apply to the legal road. This means that applications for any new encroachments onto legal road that is adjacent to Town Belt or Reserve land will not be permitted.

In cases where there are existing encroachment licences for legal road that is adjacent to Town Belt or Reserve lands, these will be amended when the next licence is required to be issued (for example a change of ownership or use of the encroachment) to include a special termination clause. It will, without limiting the Council's normal termination powers, state that no further licence will be issued after that one. At that point the owner of the structure must remove it from legal road adjacent to the Town Belt or Reserve land. In cases where this would render the encroachment unusable, the whole encroachment will have to be removed.

Existing encroachments onto Town Belt or Reserve land itself are subject to the relevant policies established under the Town Belt Management Plan, reserve

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management plan or Reserve Act. Property owners should contact the Council for more information (see section 8: Further Information).

5.9 Fees

This section outlines the fees and rental charges applicable to road encroachments.

Residential annual rental fees will be reviewed by the Council as part of its long-term planning process (LTCCP) every three years.

The following fees and charges are applicable for existing and proposed legal road encroachments.

- A *landowner consent application fee* for Council (as landowner) assessing an encroachment and, if approved, issuing a licence or lease that provides for the private occupation of legal road. The fee is also payable where the Council undertakes an assessment of an existing illegal encroachment that is unlicensed and a licence is subsequently issued.
- An *administration fee* is for changes to existing licences or leases. This applies to changes in:
 - the ownership of the licence or lease holder
 - the use of the road encroachment
 - the size of an existing structure on the road encroachment.
- An *annual rental* for the use of the legal road. The *annual rental* is determined according to the nature and size of the encroachment (see 5.9.1 Annual Road Encroachment Rental). For residential encroachments a cost per square metre is applied when determining the *annual rental* for a particular encroachment in a particular area.
- For commercial encroachments a market rental will be charged.

The market rental will be determined by an independent valuer who may be appointed by the Council or be chosen by the licence applicant/holder, subject to the approval of the Council. The cost of obtaining the valuation will be paid by the licence applicant/holder.

5.9.1 Annual road encroachment rental for residential encroachments

The *annual rental* applies in cases where:

- people cause restricted public access or establish enclosed areas and the total encroachment is greater than 50 square metres; or
- the encroachment has a structure other than a structure exclusively for access (see table 1).

In both cases minimum annual charges apply.

When the encroachment does not restrict public access and there are no structures on the encroachment then no rental is required. Also, no rental is required where a structure is for access only.

Table 1 outlines when approval, licences, administration fees and annual rentals are applicable.

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Further information on actual fees and charges can be obtained from the Council (see Section 8: Further Information).

Table 1: When is a fee or annual rental payable?

TYPE OF ENCROACHMENT	
Unrestricted public access and no structures	No licence required No rental payable
Restricted public access but no structures are on the encroachment. See definition of “ <i>restricted public access</i> ”.	Council approval and licence required Application fee or administration fee payable Annual rental payable but only for area in excess of 50m ² Minimum annual rental applies for areas in excess of 50m ²
Encroachment with structures for access only. See definition of “ <i>structures</i> ”.	Council approval and licence required Application fee or administration fee payable No annual rental payable
Encroachment with structures (other than structures for access only). See definition of “ <i>structures</i> ”.	Council approval and licence or lease required Application fee or administration fee payable Annual rental payable Minimum annual rental applies

5.9.2 Balconies and Airspace leases

For new airspaces leases the *annual rental* will be replaced by a one-off fee covering the duration of the proposed lease – generally the lifetime of the building to which the lease relates. The fee will be based on a market valuation of the proposed airspace encroachment lease. The valuation will need to reflect the particular conditions of a lease, including any rights retained by the Council to revoke the lease in certain circumstances.

Holders of existing airspace leases have the option of obtaining a valuation for their lease and, based on this valuation, paying a signal fee to cover the remaining life of the lease. Property owners who do not wish to take up this option will be subject to the *annual rental* structure applicable to other encroachment licences.

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5.9.2 Fee waivers

The Council retains the discretion to waive the annual rental where a road encroachment is created by relocating a fence or wall onto legal road in order to address a public safety concern. This may occur on any or all of the following occasions:

- There is a significant hazard
- There is an associated public safety issue
- It is impracticable or undesirable to locate the fence or wall on the boundary of the adjoining private land.

When the Council is considering waiving the annual rental it will determine whether the alternatives to an encroachment will be ineffective. In addition, the encroachment must:

- assist with the Council's obligation to ensure public safety
- fully address the public safety concern
- primarily be for the purpose of promoting public safety.

In instances where an encroachment is created to address a public safety concern the:

- line of the fence or wall shall be determined by the Council
- fence or wall must comply with the Building Act and District Plan requirements
- design of the fence or wall shall be approved by the Council.

For land encroachments, the Council also retains the discretion to waive the annual rental in cases where the steepness of the road reserve is assessed as making it unusable for other purposes.

6. COMPLIANCE AND MONITORING

The Council regularly discovers structures on legal road that were built without obtaining Council approval or an encroachment licence or lease. Some of these structures have been there for a number of years and may have been built by a previous owner of the adjoining private property, while others are recent or in the process of being built.

Erecting a structure on legal road without Council approval or an encroachment licence or lease is a breach of the Wellington Consolidated Bylaw 2008 and can lead to prosecution. It is the responsibility of the **current** owner of the property, who benefits from the encroachment, to apply for land owner consent and to obtain an encroachment licence or lease from the Council's Property Unit.

7. SALE OF LEGAL ROAD

The Council may sell legal road to a property owner when it considers that the land is not needed for utilities, roads or footpaths in the future and private occupation will not compromise the amenity or environmental values.

The sale of legal road for private use is a legal process which is outlined in Annex 2. It is subject to statutory and planning requirements and requires the section of road to be legally 'stopped'⁷. The process, under the Tenth Schedule of the Local Government Act 1974, can involve appeals to the Environment Court. The Public Works Act also provides a mechanism for stopping legal roads.

Eligibility to purchase any surplus legal road from the Council (unless it can be subdivided for use as a building site) is limited to the adjoining property owner. Most of the costs associated with road stopping and the amalgamation with the existing title have to be met by the purchaser.

The sale of any legal road will not generally be permitted where public utilities (such as pipes and cables) are located underneath, unless the prospective purchaser undertakes to relocate the services at their cost or an easement or other arrangement satisfactory to the utility operator(s) can be agreed. The Council will also need to be satisfied that the land is not likely to be required for the location of services at any point in the future.

The market value of legal road being sold by the Council will be determined by an independent registered valuer who is a member of the New Zealand Institute of Valuers. Valuations for establishing the price for purchase are based on the added value to the existing title - based on valuations before and after the addition of the land.

8. FURTHER INFORMATION

To speak to someone directly about the Wellington City Council Road Encroachment and Sale Policy please call the Council on 499 4444 and ask for the Encroachments and Road Stopping Team.

⁷ Changing the status of land from legal road to freehold land.

ANNEX 1

APPLICATION PROCESS FOR AN ENCROACHMENT LICENCE OR LEASE

In most cases the application process has the following steps:

1. application to Council for approval of a new encroachment or changes to an existing encroachment (size or use)
2. consultation is undertaken with neighbours and affected parties and, if possible, written consent is sought from any affected property owner(s)
3. consultation is undertaken with utility companies
4. Council acknowledges the application and may request additional information
5. Council inspects the proposed encroachment site
6. Council sends a letter granting or declining consent. If granted, the letter includes a licence or lease and an aerial photograph showing the encroachment
7. the applicant must, if they haven't already, obtain any required regulatory consents
8. the licence or lease is signed, witnessed and returned to Council. Council signs the licence/lease and a copy is sent to the applicant for their records. Note, construction cannot start until the licence is executed
9. the applicant has 18 months to complete the construction of the encroachment, unless a written extension is sought and granted.

In most cases the issuing of a new licence or lease for an existing encroachment has the following steps:

1. change of ownership identified by the Council (through notification from the old or new owner or the rates system)
2. letter and licence/lease documents sent to the new owner for signing
3. once the licence or lease is signed, witnessed and returned to the Council, the Council signs the licence/lease and a copy is sent to the applicant for their records.

ANNEX 2

SUMMARY OF PROCESS FOR SALE OF LEGAL ROAD

For detailed information on road stopping and the sale of legal road please contact the Council's Property Business Unit on 499 4444. What follows is a summary of the process.

The applicant prepares a survey plan defining the area of legal road to be stopped. The Council publicly notifies the proposal and provides the opportunity for objections. The road stopping proposal must be made available to the general public for inspection, together with the reasons why the road is to be stopped. The public has 40 days to object.

The Council must:

- issue at least two public notices calling for objections to the proposal to stop the road (any person may object)
- notify all owners and occupiers of land adjoining the proposed road stopping.

The Council may, at its discretion, consult with other affected parties.

If no objections are received within the time limit, the Council may, by public notice, declare the road stopped. The road ceases to be a road at that stage and may be sold.

If objections are received, the Council must decide if they are justified. This occurs at a Council hearing. Any person objecting will be given the opportunity to attend the Council hearing.

A Council meeting is held to make a decision on the objections. The Council can either:

- decide to allow the objections and decline the road stopping (meaning the subsequent sale of the land to the adjacent owner cannot go ahead), or
- decide to reject the objections and continue with the road stopping. If the objections are not withdrawn or otherwise resolved, the Council must send the objections, together with the survey plans, and a full description of the proposed alterations to the Environment Court.

The referral to the Environment Court may not necessarily result in a court hearing. The Environment Court is able to arrange mediation to resolve any objections before any hearing.

The valuation of the land will be assessed on the basis that the additional land will add value to the proponent's existing title. This valuation will take variations in the final survey area, any market movement in land values since the date of the initial valuation and any further conditions imposed by the Council into consideration.

The legal costs incurred by the Council will be recovered from the proponent.