

Wellington City Council Road Encroachment Policy submission-July 2010

Background to our submission::

I have made this submission today as I and my family have been the unfortunate victims of what can happen as a result of the current WCC Road Encroachment and Sale Policy with regards to the so called 'consultation process' with 'affected' persons and criteria used by WCC to grant Encroachment licences.

We purchased our house in Karori in Sept 2007 and then in Sept 2009 we applied to purchase the Road Reserve in front of our property in order to improve the street amenity and also the safety of our property. In November 2009 the WCC declined this application stating the area concerned provided 'access' to property at number 6 which is untrue. Our neighbours had been driving (without our permission), across our land (not road reserve) however we intended to fence our boundary as we have a young child so their ability to use our driveway (through our tolerance) would have to cease.

In October 2009 our neighbours then applied for an encroachment licence from the WCC to dig out the same road reserve area to make it wide enough for another driveway across the front of our property. To do so they would need to remove significant trees from this area and replace with a retaining wall. We declined our consent for this application and expected it to be the end of the matter as the WCC form states **'Please note: If your proposal is in front of a property that is not your own, written consent (with their signature) of the owners is required.'**

Despite number 6 already having an encroachment licence for the road reserve in front of their own house and no (required) consent from us, they were granted this licence.

The negative effects of this WCC decision are numerous to us ...loss of existing parking, loss of street privacy, increased street noise once trees removed, (Plymouth street has over 90 buses a day travelling along it), the substantial loss to our property value and most importantly the safety issues of a 'shared' driveway with a toddler.

In addition the WCC seems to have failed to follow their own policies and guidelines correctly regarding both the consultation process, the significant vegetation policy and we have also been given conflicting information/opinions from different departments, for example the Encroachment department informed us that it will be easier and cheaper for our neighbours to provide access across the road reserve in front of our property rather than their own (no figures were ever submitted to support this) however in a letter from Mayor Prendergast she states "ease of access and cost are not factors that are taken into account when processing these applications".

Our case is currently under review with the Ombudsmen's office.

We believe the procedures supporting the road encroachment licence applications are seriously flawed and can not be put right without addressing the policy behind these procedures.

Fundamentally policy should describe the desired outcome of the procedures and this is where things get complicated as much of the policy contradicts itself and Common Law Property Rights.

WCC states "**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)".

When you consider this WCC definition of Road Encroachment it is clear that anyone other than the landowner whose street frontage borders the road reserve can not hold a Road Encroachment Licence as our Common Law Property right provides the landowner exclusive right to access the highway from all points of their street frontage.

Therefore any construction of any type by another party on the road reserve in front of another's property is illegal under this Common Law.

In order for WCC to avoid legal action over frontager property rights, the section on the WCC Encroachment licence application form states:

'Please note: If your proposal is in front of a property that is not your own, written consent (with their signature) of the owners is required', must be a non-negotiable requirement in revised policy.

Our issues/suggested changes to current policy are as follows:

*Written consent (as stated above), is required by WCC if encroachment licence is for an area not in front of your property but due to a WCC Bylaw..WCC have 'sole discretion' to override this consent, which is undemocratic and unfair.

You can not deliver a fair, reasonable, or legal process when one party has absolute discretion to award an outcome overriding any part of a procedure.

It is my understanding that WCC passed a bylaw giving itself absolute discretionary powers over the Road Encroachment Policy after losing a previous legal case around this Policy. If consultation process was improved and written consent in these cases a requirement such as bylaws would not be needed.

In addition to the legal ramifications of this, it is absurd to spend time and effort on policy and procedures when one person with absolute discretionary power can simply look at each individual application and award as they see fit.

*Under WCC criteria a proposed encroachment must not **'unreasonably'** interfere with property owners right of access..this is too subjective!.Who decides what is 'unreasonable'? All encroachment licence decisions seem to be made by one WCC staff member....maybe all decisions need to be reviewed by a committee to prevent abuse of such absolute power?

*Current WCC policy seems to allow multiple encroachment licences per property. How many encroachments can a single land owner hold?

Our neighbours already had an encroachment licence for road reserve in front of their property yet were granted another to use our adjoining road reserve robbing us of any future use.

If we as adjoining property owners are the only ones able to purchase our adjoining road reserve how can use be granted to someone else?

We understand WCC wishes to sell non required road reserve to gain revenue.

Our neighbours encroachment licence brings in almost no revenue and yet prevents us from ever purchasing the Road Reserve area in front of our property.

How can this be a good decision to increase revenue?

*When an application to purchase road reserve has been submitted already,priority must be given to this over any subsequent encroachment licence application.

In our case we would loose all future usage for this area as well as take a significant property value loss through a shared driveway we did not consent to or want.

*All property owners should be classes as 'affected' when area is in front of their own property and application be 'notified'.WCC fails to do this as it opens them up to being taken to the Environment Court but leaves owners with little other options than Ombudsman or a judicial review (approx cost \$50k).

If there was an objection to any purchase of Road Reserve (by anyone) this must be resolved or is referred to the Environment Court but why are objections to Encroachments are not afforded this option?

As stated NZ has one of worst records of toddler driveway acidents/deaths rates in the world.WCC must not contribute further to these appalling statistics by granting encroachment licences that allow shared driveways.

This whole process of fighting this unfair/illegal encroachment has been very stressful,time consuming and expensive and we hope that you carefully consider our submission and hopefully we can prevent others having to go through what we have had to.

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