
REPORT 2
(1215/52/IM)

REVIEW OF ROAD ENCROACHMENT AND SALE POLICY: CONSULTATION AND RECOMMENDATIONS

1. Purpose of Report

This report presents the results of public consultation on proposed changes to Council's Road Encroachment and Sale Policy. It seeks the Committee's agreement to recommend to Council that it adopt a revised Policy in light of this input. It also seeks the Committee's agreement to a process for public consultation on rental fees and associated transitional measures that could apply from 1 July 2012.

2. Executive Summary

In June 2010 Wellington City Council proposed changes to its Road Encroachment and Sale Policy and to the method used to set fees for certain types of encroachments.

Currently rental rates are fixed across Wellington city regardless of the value of the land being used. The flat rate approach means that ratepayers are essentially subsidising a group of property owners; with the rate of subsidy increasing as the value of surrounding property increases.

These issues, as well as other more technical issues, were considered as part of the review of the Road Encroachment and Sale Policy.

The Council did not propose any new specific rental rates. Rather, the Council proposed a different framework for how rental rates would be set and noted that actual rental rates would be a matter for further public consultation.

Officers have assessed the feedback and recommend that Council now adopts a revised Policy which is largely based on the proposals included in the June 2010 consultation.

Three key elements to the revised Policy are: a rental fee structure based on differentiated fees across suburbs; changes to the policy dealing with land that is fenced or hedged; and transitional measures for the introduction of these changes.

It is recommended that under the differentiated fee structure the rental rate per square metre be set in proportion to land values in a given suburb. The rate would be set at a discount to estimated market rental rates for land in the relevant suburb, recognising that legal road is generally less valuable than normal freehold land due to its status as legal road. Some rental rates would fall while others would increase depending on the value of land in each suburb. Officers consider that this approach is more equitable to encroachment holders across the city.

It is also recommended that a maximum and minimum rental rate apply. The maximum rate would alleviate concerns about very large and unaffordable rental increases in some suburbs where land values are the highest. A minimum rate would ensure Council receives income adequate to cover the costs of administering encroachments in suburbs where land values are lowest.

Overall, it is likely that total Council income would increase under the differentiated fee structure, though the magnitude of any increase would depend on the schedule of rental fee rates ultimately agreed by Council.

In respect of existing licences involving land that is fenced or hedged, it is recommended that licence holders continue to receive the first 50 square metres of land without incurring rental fees. However, new licences (including licences re-issued upon sale of a property) involving land that is fenced or hedged would not receive the first 50 square metres of land free. This approach recognises that fencing and hedging land essentially creates exclusive private use of land, while also recognising the position of those owners who made decisions to fence land based on the existing policy.

Officers have also explored and made recommendations on the closely related issues of setting a schedule of rental fee rates to apply under the revised Policy, and transitional measures to introduce changes to fee rates. It is recommended that the Committee agree to a process for public consultation as part of the 2012-2022 Long-term plan (LTP) process on rental fees and transitional measures that could apply from 1 July 2012. It is also recommended that future revisions of the schedule occur each three years as part of future LTP processes. In the meantime the existing fee rate policy - \$11.48 a square metre (excluding GST) and adjusted by the consumer price index from July 2011 - would apply for the 2011-12 financial year.

3. Recommendations

Officers recommend that the Committee:

- 1. Receive the information.*
- 2. Note that 182 written submissions were received and 25 oral submissions were heard on the Proposed Changes to the Road Encroachment and Sale Policy June 2010.*
- 3. Note the summary of submissions attached as **appendix one** to this report.*

4. *Note the officers' responses to the issues raised by submitters attached as **appendix two** to this report.*
5. *Agree that, in response to public feedback, a revised Road Encroachment and Sale Policy includes the following key elements (**see appendix three**):*
 - (a) *minor wording changes to improve the operation and understanding of the Policy and to ensure the Policy is consistent with other relevant Council policies and plans, as included in the draft policy released for consultation in June 2010.*
 - (b) *inclusion of the "objectives", "policy principles", "criteria for evaluating road-encroachment proposals", and "consultation with affected parties" sections included in the draft policy released for consultation in June 2010.*
 - (c) *increasing the public liability insurance requirements for airspace licences and leases from \$100,000 to \$1,000,000.*
 - (d) *rental fee rates will be based on a differentiated fee structure where the rental rate per square metre is set as a proportion of average land values in a given suburb, which was identified as the Council's preferred approach to fees in the draft policy released for consultation in June 2010. The rate per square metre will be set at a discount to estimated average market rental rates for land in the relevant suburb, recognising that legal road is generally less valuable than normal freehold land due to its status as legal road.*
 - (e) *a maximum and minimum rental fee rate (per square metre) will apply.*
 - (f) *rental fee rates (including the maximum and minimum rates) will be adjusted as part of each Long-term plan process, in light of the most recent available rateable land valuations.*
 - (g) *the following definition of "hedge" will apply: "**Hedge** in respect of the definition of an encroachment structure, is a dense area of vegetation that is predominately linear and that has the effect of excluding the public from an area of legal road so that an adjacent property owner may enjoy the private use of that legal road".*
 - (h) *in respect of existing licences involving land that is fenced or hedged, such licences would continue to receive the first 50 square metres of land without incurring rental fees.*
 - (i) *in respect of new licences (including new licences issued to the purchaser of a property that has an encroachment licence associated with it) involving land that is fenced or hedged, the first 50 square metres of land will not be exempt from rental fees.*
 - (j) *in respect of existing airspace leases, owners of existing leases will be offered the option of a single fee to cover the remaining life of the lease using the valuation method described in 5(k). Property owners who do not wish to take up this option would be subject to the existing terms and conditions, noting that new rental rates may be applicable under the terms of their lease.*
 - (k) *in respect of new airspace leases, a registered valuation of any proposed airspace encroachment lease will be obtained and a one-off*

fee will be charged based on this valuation to cover the lifetime of the lease. No further rental fees will be charged in respect of such a lease.

6. *Delegate to the Chief Executive Officer and Transport (Public Transport and Rooding) Portfolio leader, the authority to make editorial changes and any changes agreed by the Committee prior to the policy being referred to Council for adoption.*
7. *Agree, in respect of rental fee rates to apply under the differentiated fee structure, that:*
 - (a) *the existing rental fee rates policy of \$11.48 per square metre excluding GST (which will be adjusted by the annual Consumer Price Index from 1 July 2011) will apply to all residential encroachments until the end of the 2011-12 financial year.*
 - (b) *the Council will consult, as part of the 2012-2022 Long-term plan process, on:*
 - i. *a draft schedule of differential fee rates to be phased-in from 1 July 2012.*
 - ii. *a proposed maximum rental fee rate of \$30 per square metre (excluding GST) and minimum rental fee rate of \$9 per square metre (excluding GST) to apply from 1 July 2012.*
 - iii. *the following proposed approach to phasing-in the schedule of differential fee rates: that rental fee rates increase by a maximum of \$5 per square metre per year until the relevant rental rate is reached for a given suburb, and any reductions in fees would be introduced from 1 July 2012.*
8. *Note that **appendix five** of this paper contains an indicative schedule of differential fee rates, but that a draft schedule for consultation cannot be finalised until new rateable land valuations are available in 2012.*
9. *Agree to recommend to Council that it adopt the revised Road Encroachment and Sale Policy (attached as **appendix three** to this report).*
10. *Agree to recommend to Council that the revised Road Encroachment and Sale Policy take effect immediately.*
11. *Agree to recommend to Council that it delegate to the Chief Executive Officer and Transport (Public Transport and Rooding)Portfolio leader, the authority to make editorial changes and any changes agreed by Council prior to the policy being released.*
12. *Note that officers will write to all encroachment holders, submitters on the June 2010 policy review and other key stakeholders advising them of the decisions on the policy review.*

13. *Agree that officers develop options to facilitate the stopping and sale of surplus unformed legal road and report to the Strategy and Policy Committee by September 2011.*

4. Background

Wellington City Council owns more than 660 kilometres of legal road. For many years the Council has allowed unformed legal road (commonly referred to as “road reserve”), the airspace above and the subsoil below roads to be used for activities other than roading – provided this does not unreasonably interfere with existing or possible future uses of the legal road.

Because the land is owned by the Council, people wishing to use it for private purposes may need to get permission (an encroachment licence or a lease) from the Council. Rental fees may also be charged, though these are not charged when an encroachment is for access only or when property owners simply maintain or beautify an area of road reserve. Wellingtonians currently hold around 6000 road encroachment licences, mainly for parking, access or outdoor living.

In June 2010 Wellington City Council proposed changes to its Road Encroachment and Sale Policy and to the method used to set fees for certain types of encroachments.

Currently rental rates are fixed across Wellington city regardless of the value of the land being used. The rental rate is currently set at \$11.48 per square metre (excluding GST). This means that property owners with encroachments in suburbs like Newlands and Tawa are paying 80 – 100 percent of the market rental rate for ordinary freehold land in their suburb. Other encroachment holders in suburbs like Thorndon and Oriental Bay are paying only around 10 percent of freehold market rental rates.

The flat rate approach means that ratepayers are essentially subsidising a group of property owners; with the rate of subsidy increasing as the value of surrounding property increases.

For example, based on the current flat fee, the annual rental fee for an average parking encroachment (approximately 18 square metres) is \$206. Advice from valuers is that in areas like Roseneath and Thorndon an encroachment licence providing exclusive parking can add up to \$35,000 to a property’s value (implying the annual rental value should be more like \$2,100).

These issues, as well as other more technical issues, were considered as part of the review of the Road Encroachment and Sale Policy. Key proposals were put to public consultation in June 2010. They are summarised at the start of the “Report on public submissions” attached as **appendix one**.

The Council did not propose any new specific rental rates. Rather, the Council proposed a different framework for how rental rates would be set and noted that actual rental rates would be a matter for further public consultation and consideration as part of the 2011–12 draft Annual Plan process.

5. Discussion

5.1 Consultation on the Road Encroachment and Sale Policy

The consultation process commenced on 8 June 2010 and closed on 8 July 2010. A description of the process is included in **appendix one**.

5.2 Main findings – 10 key themes arising from consultation

The 10 key themes arising from consultation are described in the “Report on Public Submissions” attached as **appendix one**. They are summarised below.

Table 1: Summary of the 10 key themes from public consultation

Theme	Comments from submitters
1. Concerns over the consultation process	There was a lack of information about what was actually being proposed for fees. Also concerns over notification process, amount of information provided and lack of supporting evidence.
2. Encroachments provide “public goods” and fees should reflect this	Getting cars off the street makes roads safer and more passable. Property owners save the Council money and beautify the city. The Council doesn’t look after road reserve properly. The Council should recognise/incentivise public good elements with rates rebates and payments.
3. The Council already does well from encroachments	Proposal on fees is a “revenue grab” by Council. The Council will receive extra rates income - therefore fee increases are double dipping. The Council paid nothing for the land in the first place. The land has no other value.
4. Gross imbalance of power between the Council and property owners	Council can put up fees at will and property owners have little choice but to pay. Licences can be revoked with one month’s notice - this is unfair and creates perverse incentives.
5. Affordability and people’s reasonable expectations	People on fixed incomes cannot afford significant increases in fees. Just because people have valuable properties does not mean they can pay big fee increases. People made decisions, such as building fences, based on a set of rules and it is unfair for Council to change those now. People were encouraged to park cars off the street.
6. The Council’s proposals will lead to perverse outcomes	Fee changes will lead to perverse outcomes like people ripping down structures and Council will get no income. People will clear vegetation that might be considered a hedge. Buying a resident’s parking permit is cheaper than getting an encroachment fee. If fees go up people will abandon encroachments and park on the street which will add to congestion.
7. Views on possible approaches to setting rental rates	A flat rate is simple to understand, fair and should be retained. The flat rate approach was supported by around three quarters of the submitters expressing a view on it. There is as much variation in land values within suburbs as between suburbs – therefore moving to differentiated fees is not “fairer”.

	Some submitters agreed that there was a case for moving to differentiated fees (17% support from those commenting on it) or individual valuations of encroachment land (20% support of those commenting on it).
8. Views on proposals for fences & hedges and the 50m² free policy	The Council should leave the 50m ² free policy in place where there are fences and hedges. The policy on what is a fence and (especially) a hedge is not clear and will lead to disputes and perverse outcomes. Some submitters thought fences have more “taking” effect than some other structures - therefore charging fees where land is fenced is justified. Fences established for safety should be automatically exempt from fees.
9. Overwhelming support for purchasing unformed legal road	Much of the land will never be used for road and the road stopping and sale process should be more attractive for property owners. The Council should share the costs of road stopping. A more attractive mechanism should be established before any major review of fees – this would give property owners options to buy land if the fee structure is onerous.
10. Changes should only take effect as licences are issued / re-issued	Strong support for any changes to fees or other policies that affect what people pay only taking effect on the sale of a property (when licences are re-issued to a new owner) or the issuing of a new licence.

5.3 Summary of officers’ responses and recommendations in light of issues raised in submissions

This section is divided into three parts:

- feedback and recommendations on proposed changes to the objectives and principles, criteria, and consultation sections of the draft policy
- responses to the key themes outlined in table 1 above
- other proposed changes not discussed elsewhere.

5.3.1 Summary of feedback and officer recommendations on Objectives, Principles, Criteria and Consultation sections

Objectives and Principles

Feedback on the proposed **objectives and principles** was fairly evenly spread between opposed, supportive and neutral. Opposition focussed on those aspects of the objectives and principles referring to the Council seeking to make a reasonable return from its unformed legal road asset. There was little opposition expressed about other aspects of these sections.

Section 14(g) of the Local Government Act 2002 (LGA) provides that “*a local authority should ensure prudent stewardship and efficient and effective use of its resources in the interests of its district or region*”. Officers consider it is appropriate and consistent with the LGA for the Council to seek a reasonable return on these assets in the interests of the wider community. Officers therefore recommend that the proposed objectives and principles be adopted without amendment.

Criteria

Similar proportions of people supported and opposed the proposed **criteria**. A quarter of people were neutral. Often no further elaboration was provided from those who opposed the criteria. Where reasons were given there was not enough commonality in these views to determine any underlying themes.

Officers consider the criteria, as proposed, would:

- help ensure the Council meets its legal obligations;
- help officers to assess the benefits and detriments of encroachment proposals; and
- provide a clear framework of issues that should be assessed when considering proposed encroachments.

It is recommended that the proposed criteria be adopted without amendment.

Consultation

Two thirds of submitters supported the proposals on **consultation** while a further 17 percent were neutral. A small number of submitters opposed this proposal on the basis that affected property owners should have an absolute right of veto over encroachment proposals. Officers consider it is appropriate for the Council to retain ultimate decision making over encroachments, while ensuring the views of neighbours (who must be properly informed) are fully considered. It is recommended that the consultation proposals be adopted without amendment.

5.3.2 Summary of recommendations on the 10 key themes

A full discussion and officers' responses to each of the ten key themes is provided in **appendix two**. These are summarised in table 2 below.

Table 2: Summary of officers' recommendations in response to the 10 key themes arising from public consultation

Theme	Officers response and recommendations
1. <i>Concerns over the consultation process</i>	Officers consider that the consultation process was appropriate for the nature of decisions being considered and that it was sound both in terms of notification and the information provided.
2. <i>Encroachments provide "public goods" and fees should reflect this</i>	Officers do not agree that the provision of public goods by encroachments provides a rationale to discount rental fees. Encroachments are primarily for exclusive private benefit. The provision of public goods, if any, is an unsolicited by-product of the encroachment of unknown quantity and quality. The Council does not provide support for the many other public goods that are provided as a by-product of private investment or activities.
3. <i>The Council already does well from encroachments</i>	Evidence shows that, over all, the Council is generating a poor rate of return from these assets in private use. Moreover, the existing flat fee approach appears inequitable to many encroachment holders. For example, based on the current fixed fee of \$11.48 per square metre, around 80% of encroachment licence holders are paying less than 50% of the estimated market rental rate for the land. 25% are paying less than a fifth of market rental rates. Based on discussions with land valuers, a reasonable rental rate for encroachment land should typically be around 50% of market rental rates. In addition, the current policy makes significant amounts of land available for exclusive private use (fenced or hedged land) with no charge. This lowers the Council's returns still further. It also means that the Council is effectively subsidising a group of ratepayers and forgoing income that would be available to benefit the wider community. The flat rate approach means that the rate of subsidy increases as the value of surrounding property increases. Officers recommend changes to both rental rates and to the 50 square metre free policies (discussed under themes 7 and 8 below).
4. <i>Gross imbalance of power between the Council and property owners</i>	<p>All encroachment holders have voluntarily entered agreements that provided for fees to be set at the sole discretion of the Council and termination on one month's notice. Notwithstanding the Council's clear rights, it is appropriate for the Council to be cognisant of the implications of its decisions for individuals and their ability to respond / adapt to changes.</p> <p>Officers recommend the Council consult on an upper and lower limit for rental fee rates. Officers also recommend consulting on transitional measures to the introduction of key fees changes. Officers do not recommend changing the one-month termination provisions of encroachment licences, as this arises from the land's status as legal road.</p>
5. <i>Affordability and people's reasonable expectations</i>	The issues raised under this theme are similar to those discussed under theme 4 above. While the argument is acknowledged, it must be considered in light of the fact that encroachment holders entered agreements in the knowledge that the Council retained sole discretion over certain key conditions. As with theme 4, officers consider that setting maximum levels of rental fees would help address these concerns. The issue of fences and hedges was raised specifically in relation to property owners' "reasonable expectations" that 50 square metres of land would be available free. This issue is discussed under theme 8 below.

<p>6. <i>The Council's proposals will lead to perverse outcomes</i></p>	<p>It is possible that some encroachment holders will remove structures in order to avoid paying increased fees. However, officers do not consider this is likely to be significant, and note that a limit on the maximum rental rate would assist in this respect.</p>
<p>7. <i>Views on possible approaches to setting rental rates</i></p>	<p>Officers consider that moving to a differentiated fee approach is justified both in terms of equity between encroachment holders and return on council assets in private use. It is also consistent with principle of prudent financial stewardship in the LGA. Officers note submitters' concerns over potentially very high fee increases. A maximum rental fee rate would help address this concern. A phase-in period for new rental rates would also help address some concerns of existing encroachment holders. Further discussion on setting a schedule of rental fees is provided later in the paper under "Financial considerations".</p>
<p>8. <i>Views on proposals for fences & hedges and the 50m² free policy</i></p>	<p>Fencing of unformed legal road land will typically create exclusive private use of the land. Officers consider that it is appropriate and consistent with the LGA for the Council to charge rental fees for all land that is fenced. Hedges can equally limit access and create exclusive private use. In those cases it is appropriate that hedges be treated in the same way as fences. The definition of "hedge" needs to be focus on situations where hedges are used to create exclusive private use. This will require an assessment by officers.</p>
<p>9. <i>Overwhelming support for purchasing unformed legal road</i></p>	<p>Increased sales of surplus unformed legal road can provide benefits to the community (for example through enduring parking solutions, allowing intensification without urban sprawl, and additional income to the Council) as well as private benefits. Officers recommend further work be undertaken to develop specific proposals to facilitate the stopping and sale of surplus unformed legal road.</p>
<p>10. <i>Changes should only take effect as licences are issued / re-issued</i></p>	<p>Officers recommend that the Council adopts transitional measures when implementing the two key recommended changes to fees (that is the differentiated fee approach and changes to the fences and hedges policy). This approach will: help mitigate the effect of the changes for many existing owners; allow property owners time to adapt to the new regime; and help address the concerns raised under themes 4 and 5 in particular.</p> <p>With respect to the fences and hedges policy, officers recommend that changes take effect only in respect of new licences (including new licences issued when properties are sold).</p> <p>Officers recommend that new fee rates under a differential fee structure be phased-in with changes applying from 1 July 2012. Officers recommend that fee rates increase by not more than an additional \$5 per square metre per year until the appropriate fee rate is reached. Any fee reductions would be introduced from 1 July 2012.</p> <p>Assuming transitional measures are agreed, it is recommended that all other changes to the Policy should take effect immediately. This would allow applications for new or renewed licences to be considered under the new policy framework (even though the existing rental rate will apply for the first year of those licences). Further discussion on transitional measures is provided later in the paper under "Financial considerations" later in the paper.</p>

5.3.3 Other proposed changes

Airspace leases

The Council proposed changes to the treatment of new airspace leases. Instead of an annual rental fee new leases would be valued upfront and a one-off fee paid to cover the life of the lease. Existing lease holders would have the choice of this option or retaining their existing lease agreements (subject to any new rental rates applicable to their suburb).

Many submitters were neutral on this proposal, reflecting the relatively small number of people affected by it. Of those that did provide feedback using the submission form, thirty-seven percent opposed the proposal and 24 percent supported it.

Officers consider that this proposal would address a difficult situation where people buying apartments are sometimes unaware of airspace leases and end up in conflict with the Council over them. The proposal also has the potential to generate better overall returns for the Council. It should not, however, prevent developers' from investing in balconies, since valuations should reflect the need for developers to make a reasonable return on their investments. The effect on developers could be reduced further by, for example, only requiring payment when the first unit in a development is sold. This would reduce any cashflow and financing implications of the new policy. The proposal would not affect any existing leaseholders' rights.

It is, therefore, recommended that the proposal for airspace leases be adopted without amendment.

One submitter considered that the requirement for \$100,000 public liability insurance was inadequate and should be increased. Officers agree that \$100,000 of public liability insurance is small by current standards and may be inadequate should a significant event occur. In addition, premiums for \$1,000,000 of insurance are relatively modest. Officers recommend this part of the policy be amended to provide for a minimum of \$1,000,000 in public liability insurance.

Ensuring consistency between policies

Minor changes were also proposed to the section of the policy dealing with encroachments onto or adjacent to Town Belt land or other reserve land. These changes were to ensure the Road Encroachment and Sale Policy aligned with specific policies dealing with these types of land. There was very little feedback on these issues, and given they align this Policy with already agreed policies, it is recommended that these be adopted without amendment.

5.4 Fiscal considerations – fee rates and transitional measures

Current income from encroachment fees is around \$1.4 million per year. It costs around \$0.5 million a year to administer the 6000 or so encroachment licences and leases.

Four key proposals have significant fiscal implications. These are: adopting a differentiate fee structure; a proposed limit on the maximum and minimum rental

fee rate; removing the 50 square metre free policy where land is fenced or hedged; and providing transitional measures.

The public will need to be consulted on any new fees schedule and transitional measures that apply to the introduction of new fee rates. Officers recommend that such consultation occurs as part of the 2012-2022 LTP process. This would mean fee rates for 2011-12 financial year would be \$11.48 per square metre adjusted for CPI from 1 July 2011 (that is the current rental rate policy).

Differentiate fee structure and maximum and minimum rates

The fiscal implications of adopting a differentiated fee structure depend on the schedule of rental rates ultimately agreed by the Council and the applicable maximum and minimum rates.

Assuming a schedule based broadly on a 50 percent discount compared to estimated market rates and a \$25 per square metre maximum rate and \$9 minimum rate, then adopting differentiated fees would generate an estimated \$350,000 in additional revenue per year (once any phase-in period was completed). If the maximum rental rate were increased to \$30 per square metre this would increase revenue by an estimated \$430,000 per year. At a maximum \$35 per square metre the additional revenue would be around \$490,000 per year.

Officers recommend that any changes to fee rates be introduced, after consultation, from 1 July 2012 with a transition mechanism so that rates increase by a maximum of \$5 per square metre per year until the relevant rental rate is reached for a given suburb. Any reductions in fees would be introduced from 1 July 2012. The existing rental rates policy – that is \$11.48 per square metre adjusted for CPI – would apply for 2011-12 financial year.

This transition mechanism would provide a four year transition period (starting on 1 July 2011) before a maximum fee rate of \$25 per square metre was reached, a five year transition for a maximum rate of \$30 per square metre (see table 3 below), or a 6 year transition period if the maximum rate was \$35.

Such a transition mechanism would allow property owners time to adjust to the new rates. Some owners may elect to pursue road stopping and sales in advance of any fee increases.

Appendix four provides more information on the implications for encroachment holders of possible maximum and minimum rental rates.

Appendix five provides an indicative schedule of differentiated rental fee rates that could apply from 1 July 2012. A draft schedule for consultation cannot be finalised until new rateable land valuations are available in 2012. However, it is recommended that the Committee agrees to consult (as part of the 2012-22 Long-term plan) on a proposed maximum fee rate of \$30 per square metre and a minimum rate of \$9 per square metre.

Agreeing these proposed maximum and minimum rates now should help alleviate the concerns of some encroachment holders in the highest value suburbs about the

extent of increases the Council is considering. It will also help manage the expectations of encroachment holders in lower value suburbs.

In addition, it is recommended that the schedule of differentiated rental fee rates (including the maximum and minimum rates) be adjusted every three years as part of each LTP process. This would allow new fees to be considered in light of the most recently available rateable land valuations, while reducing administration costs.

Table 3: Effect of proposed transitional measures and maximum and minimum fee rates on rentals payable

Indicative groups of suburbs and rental rates	Indicative rental fee payable per square metre by year				
	2011/12	2012/13	2013/14	2014/15	2015/16
Group One: \$9	\$11.48	\$9.00	\$9.00	\$9.00	\$9.00
Group Two: \$11.50	\$11.48	\$11.50	\$11.50	\$11.50	\$11.50
Group 3: \$15	\$11.48	\$15.00	\$15.00	\$15.00	\$15.00
Group 4: \$20	\$11.48	\$16.48	\$20.00	\$20.00	\$20.00
Group 5: \$25	\$11.48	\$16.48	\$21.48	\$25.00	\$25.00
Group 6: \$30	\$11.48	\$16.48	\$21.48	\$26.48	\$30.00

- See appendix five for a guide to which suburbs fall into the indicative rental fee groups described in table 3.
- All figures exclude GST.
- Rental fees payable in 2011/12 (\$11.48) would be adjusted by annual CPI
- Rental fees payable in 2015/16 would be subject to review during the 2015-25 LTP process.

Fences and hedges policy

It is more difficult to estimate the effect of changes to the 50 square metre free policy since the Council has not routinely collected information on whether land encroachments are fenced or hedged. Officers' best estimate is that making this change alone would increase revenue by between \$200,000 and \$400,000 per year once fully implemented (though these estimates are heavily assumption based).

Officers recommend that changes to the fences and hedges policy take effect only in respect of new licences. This includes when a property is sold, since an existing licence is cancelled and a new licence issued to the purchaser of the property.

This would allow new owners to factor-in the effect of policy changes when purchasing a property, while maintaining conditions of use for current encroachment holders.

In practical terms, such an approach would aid the implementation of the new policy in that it would allow officers to make assessments of whether land is fenced or hedged over a period of time. It would also allow the assessment of other conditions for land encroachments.

Roughly 10 percent of encroachment licences are reissued each year when properties are sold.

There are a number of other options for when changes to the fences and hedges policy could become effective. For example, the Council could agree that the arrangements described above expire after a set period of time, after which all licences would become subject to the new policy. Alternatively, the Council might change the 50 square metre threshold and introduce changes immediately for areas in excess of a new threshold. Another option would be to introduce the changes from 1 July 2011.

It is considered that the approach recommended by officers provides a pragmatic approach to introducing the proposed changes in a way that should minimise the effects on existing property holders while still allowing the roll-out of the new policy over a manageable timeframe and with minimal administration cost. Future reviews of the Road Encroachment and Sale Policy could consider whether any adjustments are needed to the introduction of the new fences and hedges policy.

Financial implications of both differentiated fees and fences and hedges policies

The combined effect of adopting the differentiated fee proposal and changes to the fences and hedges policy is estimated to be an increase in revenue of \$750,000 per year (assuming a maximum rental rate of \$30 and minimum rental rate of \$9 per square metre) once fully implemented.

5.5 Consultation and Engagement

A description of previous consultation and engagement is described in appendix one. This engagement covered all the recommended changes to the policy and framework for setting fees that are the subject of this paper.

Earlier consultation did not, however, propose actual fee rates. This paper recommends that further consultation be undertaken on a draft schedule of rental fee rates and transitional arrangements as part of the 2012-2022 LTP process. In advance of formal consultation it is proposed that Council officers write to all existing encroachment licence and lease holders and other key stakeholders¹ advising them of the Council's decisions and the basis of future consultation on fees.

5.6 Climate Change Impacts and Considerations

There are no climate change implications associated with this paper.

¹ Key stakeholders include the legal profession involved in property transactions, the real estate industry, and the development community.

5.7 Long-Term Council Community Plan Considerations

The recommendations in this paper would maintain the existing rental fee rates for encroachments as noted in the 2009-19 LTCCP. Changes to fee rates would be consulted upon as part of the 2012-22 LTP process.

6. Conclusion

The draft Road Encroachment and Sale Policy was put to public consultation over June and July 2010. Officers have assessed feedback and made recommendations for a revised policy. Officers have also explored and made recommendations on the closely related issues of setting a schedule of fees to apply under any new policy and transitional measures to introduce key changes. These latter issues would need to be the subject of further consultation.

It is recommended that the Committee referred a revised policy to Council for adoption, and agree that the issues of differentiated rental fee rates and related transitional measures be consulted on as part of the 2012-22 LTP process.

7. Appendices

Appendix one: Report on Public Submissions (June – July 2010) on the Review of the Road Encroachment and Sale Policy

Appendix two: Officers' Responses to Submissions on the Review of the Road Encroachment and Sale Policy

Appendix three: Revised Road Encroachment and Sale Policy, March 2011

Appendix four: Information on different maximum and minimum fee rates and the implications for encroachment holders

Appendix five: Indicative schedule of rental fee rates

Contact Officer: *Bryan Smith, Principal Advisor, Policy*

Supporting Information

1) Strategic Fit / Strategic Outcome

The recommendations in this paper are consistent with the Local Government Act 2002 the Council's LTCCP strategy for a "compact, vibrant, attractive city".

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

The Road Encroachment and Sale Policy and fee rates are summarised in the 2009-19 LTCCP. The recommendation in this paper would maintain existing policy on fees until the next LTP process. Effects on future revenue depend on decisions yet to be made by Council.

3) Treaty of Waitangi considerations

There are no specific Treaty of Waitangi considerations in this report.

4) Decision-Making

These are not significant decisions under the terms of the Council's Significance Policy. The level of research, consultation and analysis is appropriate for the nature of this decision.

5) Consultation

This paper reports on consultation that has taken place. It covers both the process used for consultation and the results of that consultation.

6) Legal Implications

There are no specific legal implications in this report. The Council's legal advisors have been consulted during the preparation of the report.

7) Consistency with existing policy

This paper reports on consultation on a proposal to amend current Council policy. It makes recommendations for a revised policy.

Appendix one

**Report on Public Submissions
June – July 2010**

on the

**Review of the
Road Encroachment and Sale Policy**

Introduction

Wellington City Council owns more than 660 kilometres of legal road. For many years the Council has allowed unformed road, the airspace above and the subsoil below roads to be used 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 these for private purposes may need to get permission (an encroachment licence or a lease) from the Council. Rental fees may also be charged. Wellingtonians currently hold around 6000 road encroachment licences, mainly for parking, access or outdoor living.

In June 2010 Wellington City Council proposed changes to its Road Encroachment and Sale Policy and the fees charged for certain types of encroachments onto unformed legal road - commonly referred to as “road reserve”.

The Council’s proposals

The Council agreed to consult with the public on a number of proposed changes to its Road Encroachment and Sale Policy. The Council is also considering changes to how it sets fees when public road reserve land is used privately.

The key proposals put for public consultation in June 2010 were:

- Amendments to the objectives, principles and criteria sections of the policy to help officers and property owners through the decision-making process.
- A new section on ‘consultation with affected parties’ outlining the Council’s expectations that property owners proposing encroachments will consult other property owners in the vicinity
- Changes to the section dealing with encroachments onto Town Belt land to ensure that decisions on these encroachments are taken in accordance with relevant policies in the Town Belt Management Plan.
- With respect to fees, the Council consulted on three possible approaches for setting annual rental fee rates:
 - status quo (a flat rental rate per square metre – currently \$11.48 excluding GST)
 - a differentiated fee structure where rental rates are set in proportion to land values in a given area (Council’s identified preferred approach)
 - individual valuations of encroachment land.

- Other proposed changes involving fees to:
 - clarify that fences and hedges are 'structures' for the purpose of determining fees. This means that proposed encroachments with fences or hedges would no longer be exempt from paying rental fees on the first 50 square metres of encroachment land
 - change how new airspace leases (for example, for balconies) would be valued and fees would be set and paid - airspaces leases would be valued and a one-off fee paid to cover the life of the lease.
- Two options were put forward for when any changes would be introduced:
 - from 1 July 2011 (the Council's identified preferred option); or
 - when licences are issued or reissued (for example, when a property is sold or when changes are made to an existing encroachment licence).

The Council did not propose any new fees to apply in a given suburb. Rather, the Council noted that actual fees would be a matter for further public consultation and consideration as part of the 2011–12 draft Annual Plan process. The purpose of the consultation round reported in this document was to get feedback on the approach used for setting fees, rather than the level of fees themselves.

Consultation process

Consultation commenced on 8 June 2010 and closed on 8 July 2010, providing 23 working days for submissions.

The consultation was notified on 8 June in an article in the Wellington Page of the Dominion Post. The article explained the proposals in the policy, where people could go for more information, and the submission process.

A consultation document, summary document and electronic submission form were posted on the Council's website on 8 June. Consultation documents and summary documents went to all Wellington City Council public libraries and the Service Centre on 8 June. A media statement was also issued on 8 June.

Early the following week (commencing 14 June) a summary information brochure was delivered to all property owners identified as holding an encroachment licence or lease. In total about 5800 summary brochures were posted. The brochure provided a high-level summary of the key proposals as well as directing people on where to find more information and when and how to make a submission.

The consultation was again publicly notified in the Wellingtonian on 17 and 24 August. The article provided a short summary of the proposal, where to go for more information and outlined the submission process.

Officers acknowledged every written submission in writing, reminding submitters of their right to make an oral submission to Council.

Oral submissions were heard on 29 July 2010 by the Council's Strategy and Policy Committee.

Responses to consultation

In total, 182 written submissions were received on the Road Encroachment and Sale Policy and 25 oral submissions were heard by Council. Three written submissions were received after the closing date but were considered in the submission analysis.

One hundred and seventy-seven of the submissions received were submitted by individuals. Eight submissions were received from groups or organisations, including:

- Ngaio Progressive Association
- Strathmore Park Progressive and Beautifying Association
- Herbert Gardens Limited
- Roseneath Resident's Association
- Tawa Community Board
- Cashbox Syndicate

In general, the submissions of organisations (largely groups representing residential ratepayers) raised the same issues as those of individual submitters.

A sample of submissions shows that more than 85 percent of submitters are current holders of an encroachment licence or lease.

Feedback received from the public

Summary of Common Issues and Themes

The key issues raised by submitters are outlined below. Typically each issue was raised by a number of submitters. Where an issue was raised by a large number of submitters this is noted in the summary as “a widely held view”.

The summary reflects both written and oral submissions. In general oral submissions closely followed the written material provided by each submitter.

The issues have been grouped into common themes.

No attempt has been made to comment on or respond to the issues raised by submitters. This is the subject of a further report.

Theme 1: Concerns over the consultation process

- There was a lack of information about what was actually being proposed by way of encroachment fees. This meant that comments were not based on adequate information and/or submitters were confused about what fee increases might eventuate. This was a widely held view.
- Any consultation on actual rental fees should not be included in the Draft Annual Plan process, but rather should be a stand alone process.
- Notification of the public was inadequate.
- The brochure provided to each household with an encroachment did not make it clear how significant the implications might be for them.
- There was inadequate analysis and supporting evidence, especially for the proposed changes to the fee approach.

Theme 2: Encroachments provide “public goods” and fees should reflect this

- Getting cars off the street (by providing encroachments for car parking structures) makes roads safer and more passable. Fees should recognise this. This was a widely held view.
- Property owners looking after unformed legal road save the Council money and beautify the city. Fees should recognise this. This was a widely held view.
- The Council doesn’t look after land properly, leaving property owners to do it without compensation.
- The public good provided by encroachment holders is significant and Council should recognise/incentivise this with rates rebates and payments.

Theme 3: The Council already does well from encroachments

- The proposal on fees is a revenue grab by Council – returns are already fair given the quality of the land and the encumbrances over it. This was a widely held view.
- Where encroachments add value to properties, Council will receive extra rates income - therefore fee increases are double dipping.
- The Council paid nothing for the land in the first place - it is held by the Council on behalf of property owners.
- The land has no other value - some submitters suggested it was waste land.
- It is the value of the improvements made by property owners that makes the land valuable – therefore fees are charging landowners twice.
- The costs of administering the proposed new fee approach would be greater than the benefit.

Theme 4: Gross imbalance of power

- Council can put up fees at will. Once property owners have established structures, they have little choice but to pay whatever charges the Council imposes. This was a widely held view.
- Licences can be revoked with one month's notice. This is unfair and creates large uncertainties. Also, perversely, it leads to property owners being unwilling to invest in maintaining structures to a high standard.

Theme 5: Affordability and people's reasonable expectations

- People on fixed incomes cannot afford significant increases in rental fees. Just because people have valuable properties (which they may have lived in for many years) does not mean they have the means to pay substantial increases in fees. This was a widely held view.
- People made decisions, such as building fences, based on a certain set of rules. It is unfair for Council to now change those rules and impose large extra costs. This was a widely held view.
- People were encouraged to park cars off the street – the proposed changes would penalise people who have done this.

Theme 6: The Council's proposals will lead to perverse outcomes

- The proposed fee changes will lead to perverse outcomes – for example, people will rip down structures and Council will get no income. Fences will be pulled down and land will no longer be looked after.
- People will clear vegetation that might be considered a hedge.
- Buying a resident's parking permit is cheaper than paying an encroachment fee and building a parking structure. If fees go up people will abandon their encroachments and park on the street and this will add to congestion on already narrow streets.

Theme 7: Views on the possible approaches to setting rental rates

- A flat rate is simple to understand, fair and should be retained. This was a widely held view.
- There is as much variation in land values within suburbs as between suburbs and between types of encroachments (such as encroachments that allow garages compared with those that only allow car pads, or flat land versus steep land) – therefore moving to differentiated fees is not justified and not inherently “fairer”.
- Some submitters agreed that there was a case for moving to differentiated fees.
- Some submitters agreed that there was a case for individual valuations of encroachment land.

Theme 8: Views on proposals for fences & hedges and the 50 square metre free policy

- The Council should leave the 50 square metre free policy in place where there are fences and hedges. This was a widely held view.
- Fences established for safety should be automatically exempt rather than relying on officers' discretion to grant an exemption.
- Policy on what is a fence and (especially) a hedge is not clear and will lead to disputes and perverse outcomes.
- Fences have more “taking” effect than some other structures - therefore charging fees for fences is justified.

Theme 9: Purchasing unformed legal road

- Much of the land will never be used for road or other public uses. This was a widely held view.
- Many submitters supported making the road stopping and sale process more attractive for property owners because the current process is uncertain, takes too long, and is too expensive. This was a widely held view.

- Putting all costs on landowners is unfair when it is the Council that is selling the land and getting the financial benefit. Council should share the costs.
- A more attractive road stopping and sale mechanism should be established before any major review of fees – this would give property owners options to buy land if the fee structure is onerous.
- Only one submitter strongly opposed facilitating sales of unformed legal road.

Theme 10: Changes only when licences are issued or re-issued

- strong support for any changes to fees only taking effect on the sale of a property (when licences are re-issued) or the issuing of a new licence.
- some support for a phase-in over a set period.
- some support for introducing any changes from 1 July 2011.
- See discussion on “Question 6” below for further details

Analysis of Responses to Specific Questions

The consultation document invited submitters to rank their support or opposition for five key proposals using a five point scale ranging from “strongly support” to “strongly oppose”. Two further questions asked for general comments about the draft policy and about the way fees are set.

Roughly three quarters of submitters used the submission form. Statistics derived from their submissions are presented in the graphs below.

The remainder of submitters did not use the submission form but provided comments on the proposals by letter or e-mail. Their comments are included in the discussion below.

The views of oral submitters are also incorporated in the analysis below and these tended to closely follow their written submissions.

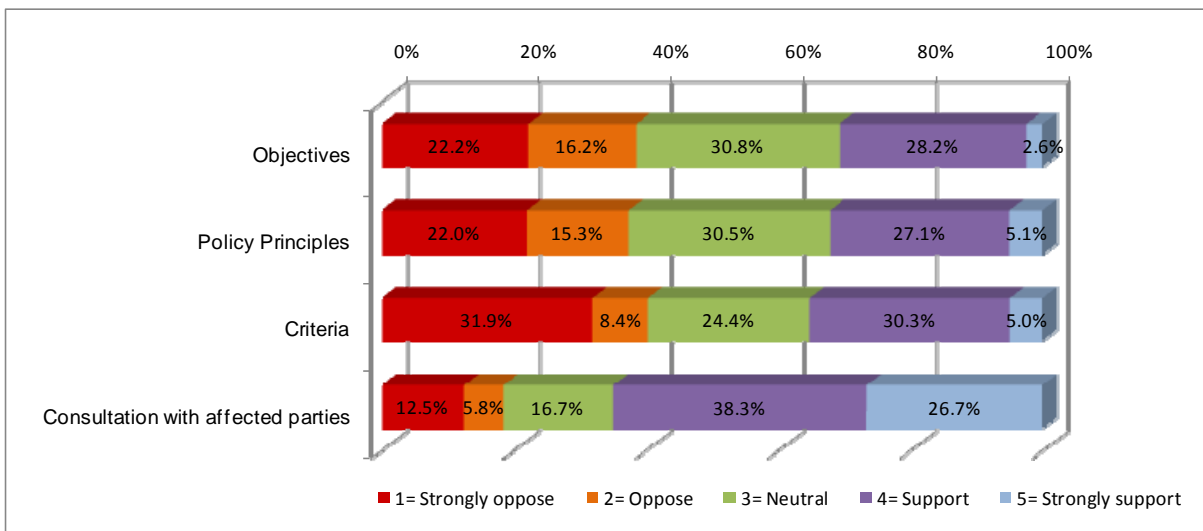
Question 1: Some parts of the Road Encroachment and Sale policy have been changed. What are your views on the following parts of the draft policy?

Objectives

Policy Principles

Criteria for evaluation of road encroachments

Consultation with affected parties



Objectives and Principles

Submitters were relatively evenly divided in their support for, or opposition to, the changes to the objectives and policy principles in the draft policy. Roughly one third of submitters who completed a submission form were opposed to the objectives and policy principles and one third supported them. A further third were neutral.

Submitters who opposed the policy principles tended to focus on the first principle: “Road reserve is Council-owned land; the Council will seek to make an economic return from this asset where appropriate”. This probably reflects a general concern about fee rises that might result from the proposed changes to the policy. A few submitters rejected the notion that road reserve was owned by Council, considering that it belonged to the citizens and ratepayers of Wellington. Many submitters considered that Council should not be seeking an economic return from encroachment land that was of no real use to Council and which was being maintained by ratepayers. Many of those submitters considered that the proposal amounted to a ‘revenue grab’ by Council.

“I am concerned that a major consideration – unstated in the documents - is to increase revenue.”

Submitters who supported the objectives and policy principles typically agreed that encroachments represent private use of a public asset and it was reasonable for Council to seek a return on that asset.

Criteria

Forty percent of submitters opposed the criteria for evaluating road encroachment proposals (the framework for analysis of the legal factors and beneficial and detrimental effects of an encroachment proposal).

Slightly fewer, 35 percent, supported the criteria. The remaining 25 percent of respondents were neutral.

Often no elaboration was provided for why a submitter opposed or supported the criteria. In some cases opposition appears to be part of a generic

opposition to changes to the policy or to fees. Where specific reasons were provided they included:

- the Council doesn't own the land, therefore shouldn't be applying any criteria
- the Council applies criteria in an un-transparent way and doesn't follow its own rules
- the Council should give more weight to "existing use rights"
- there is no need to change the existing policy
- there is no difference between use of the land for access or some other uses
- the land should be kept for the greater good not for private use.

There was not, however, enough commonality in these views to determine any themes as to why submitters opposed the criteria.

Consultation

Approximately two thirds of submitters supported the proposal that Council consider the views of affected parties (adjoining property owners) when determining an application for an encroachment.

One submitter commented that written consent should always be required. Another submitter argued that consultation with affected parties was unnecessary if encroachment applications required resource consent.

Question 2: Do you have any concerns or views about the draft Road Encroachment and Sale Policy?

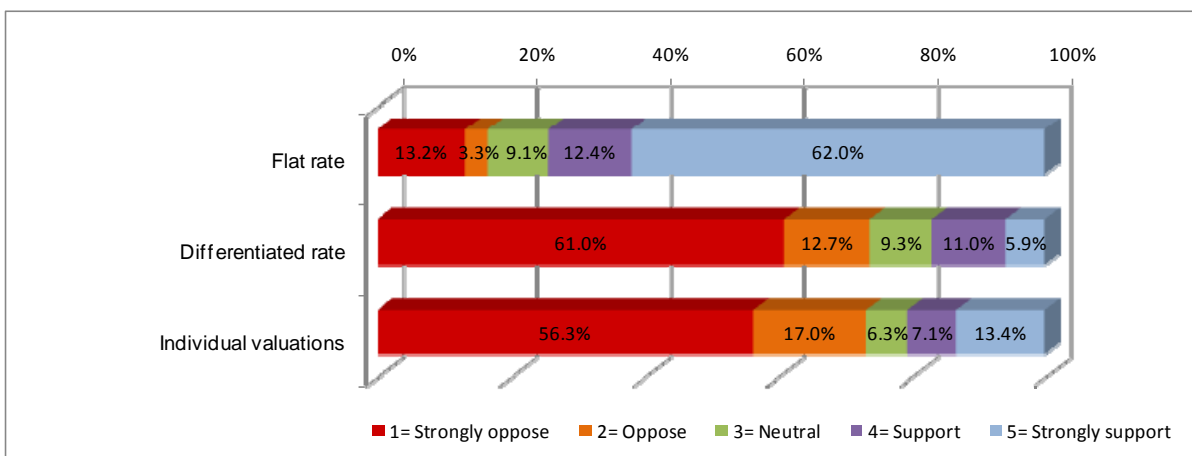
Responses to this broad question are reflected in the summary of issues and themes above. Responses are also included in the commentary on each of the questions analysed in this section of the report. The responses are, therefore, not repeated again here.

Many submitters reiterated or expanded on their comments to this question in their response to question 7, which invited submitters to express general concerns or views about how fees are set.

A small number of submitters used these general sections to raise specific concerns or issues with how they have been affected by encroachments on neighbouring properties. Comments included:

- neighbours consent should always be required before encroachment licences are approved
- structures on road reserve should be subject to the same planning conditions as the adjacent land, including light planes, height and bulk requirements
- an encroachment licence should not be seen as having a 'right to privacy' on the road reserve land.

Question 3: The Council is consulting on three options for how to set rental rates: (1) a flat rate per square metre (existing policy); (2) differentiated fees where the rate per square metre is in proportion to land values in the area (the Council's preferred option); or (3) individual valuation of each encroachment licence. What are your views on these options?



Overwhelmingly submitters supported the retention of a flat rate mechanism for determining rental fees for encroachments.

Approximately three quarters of submitters who completed a submission form supported a flat rate and opposed differentiated fees (Council's identified preferred option) or individual valuations. Sixty-two percent of those submitters strongly supported maintaining a flat rate.

Seventeen percent of submitters who completed a submission form opposed a flat rate and supported differentiated fees. Twenty percent supported individual valuations. Less than 10 percent of submitters who completed the form held neutral views on this topic, reflecting a high level of engagement on the issue.

Those submitters who did not use the submission form had similar views to those that did.

Many submitters provided additional comment on their preferred option for charging. Overall, submitters favouring a flat rate considered that the mechanism was fairer, easier to understand and easy to administer.

A differentiated fee based on land values in suburbs was largely rejected on the basis that correlating the value of encroachment land with adjoining land was unfair – land values vary within suburbs as well as between suburbs and encroachment land was often steep unusable land with disputable value.

“The flat fee is the one that best recognises the fundamental nature of the utilisation of council land which has little or no CURRENT use to the council. It makes no sense and is unfair to charge different rates for 'useless' land depending on the value of 'useful' land around it.”

Many submitters also considered that an encroachment, for example, a garage or carpad, had the same utility value regardless of the suburb it was located in.

“The use of the encroachment has the same value to the users no matter what suburb i.e. a car deck in Thorndon has the same use and value to the owner as a car deck in Tawa.”

It was apparent from the feedback that a number of submitters assumed that both differentiated fees and individual valuations would lead to higher rentals for encroachments. This was partly because some submitters misunderstood a table in the consultation document, which used the market land values of Wellington suburbs to provide estimates of corresponding market rental rates for freehold land. The table noted that these market values should not be considered as a proxy for the rentals that may be applicable to road reserve land. However, this point was either missed or not accepted by a significant number of submitters.

It follows that some or many submitters may have opposed differentiated fees or individual valuations because they assumed those options would lead to higher or much higher fees, rather than because those options were inherently flawed.

*“I think it’s very unfair to have the higher land value areas face a massive increase. Maybe if the maximum increase was 2 or 3 times, but not anywhere around **5 to 15** times (emphasis added).”*

A number of submitters made comments about a perceived revenue grab and the Council’s failure to recognise the ‘public good’ aspects of encroachments – removing cars from the road, street beautification, safer roads and pathways for pedestrians, cyclists, and vehicles, and reduced maintenance costs for Council. Many thought there should be exemptions from fees where some of these factors were present.

“Where encroachments improve public safety and street use the fee should stay as it is. We did the WCC a favour as the street verge was never maintained and bank was slipping away”.

A small proportion of submitters (17%) supported differentiated fees on the basis that they better reflect relative land values in different regions across the city.

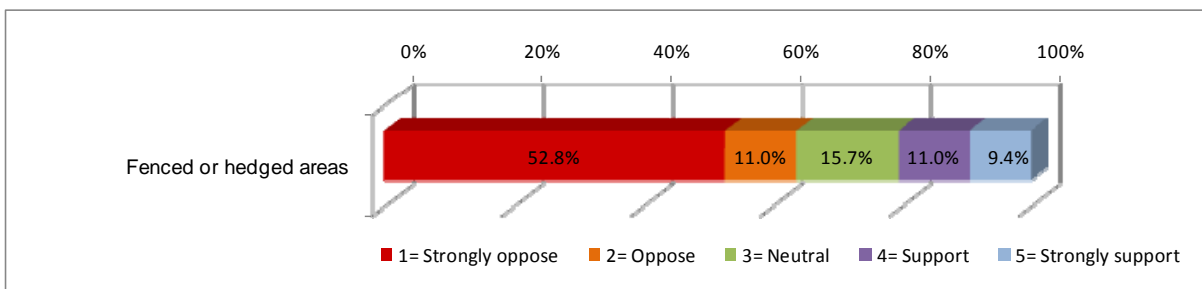
“I would like to make it clear from the start that I entirely support the principle that encroachments represent private use of public assets and that land-owners should pay for that privilege”.

Twenty percent of submitters supported individual valuations. One submitter noted that the individual valuation approach would not be expensive or complex if Council used the per square metre value of adjacent land as opposed to sending out valuers to independently value the land.

Submitters who favoured differentiated fees or individual valuations were more likely to support Council obtaining greater revenue from encroachments.

A number of submitters argued that charging rent for encroachments was ‘double-dipping’ because the ‘value’ of an encroachment was incorporated in property valuations, and therefore produced elevated rates.

Question 4: The Council proposes changing the existing policy so that where an encroached area is fenced or hedged, property owners no longer have use of the first 50 square metres of public land free of charge. What are your views on the proposal?



Nearly two thirds of submitters who used a submission form opposed the proposal to institute fees for encroachment areas that are 50 square metres or less but are hedged or fenced. Only 16 percent of submitters were 'neutral' about this proposal.

Twenty-two submitters specifically commented on the proposed change in their submission. Almost all opposed the change, commonly because they considered that plantings on encroachment land have beneficial safety or beautification effects and that the proposal to charge for those areas penalises those who have spent their own time and money (as opposed to the Council's time and money) building and maintaining them.

"The 50m2 encroachment area for hedges is a blanket policy that does not take into account situations where the land is simply a garden or otherwise unusable land. Home owners...are being unfairly penalized after spending many years and significant money to improve the appeal of encroachment land".

A number of submitters rejected the categorisation of hedges and fences as 'structures' and considered that redefining them as such was proposed for the sole purpose of improving Council revenue.

Several submitters commented that encroachment holders would pull down fences and remove hedges if areas of 50 square metres or less became subject to fees, after which the Council would bear the cost of maintaining the land. Many submitters commented that fences and hedges have been situated on steep and dangerous land for safety reasons and that Council would incur cost and assume risk if encroachment holders removed those structures.

"Removal of our gate and hedge would give public access to the land encroachment, which consists of a steep bank planted with native trees. This would result in a safety hazard to the Haitaitai School children who use the footpath to and from school and for cross country exercises during the year. For public safety the Council would have to build a new fence and maintain the land up to the new boundary".

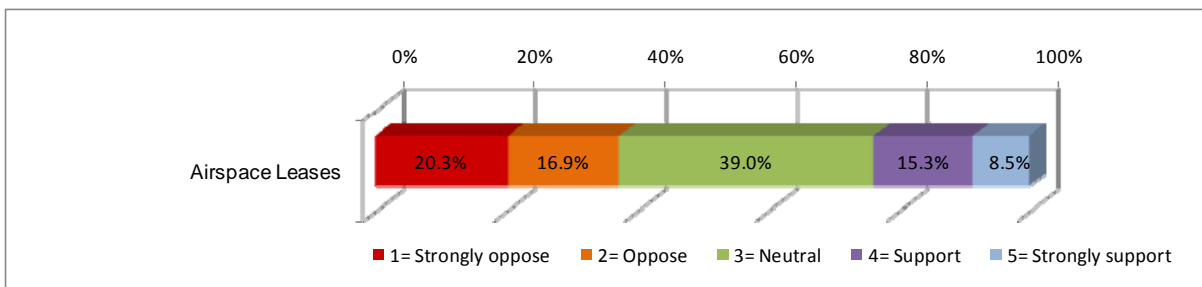
Other reasons advanced by submitters for opposing the proposal include:

- There will be difficulties determining what amounts to a 'hedge' and a blanket policy should not be applied - dense planting that is not a hedge can have the same or a worse exclusionary effect than a hedge

- There will be difficulties determining what amounts to a 'fence' – for example, is a hand rail erected for safety purposes a fence?
- A small number of submitters claim to have been incentivised or even directed by Council to erect fences or hedges on street frontages to match adjacent properties or for safety reasons. One submitter claimed that in some cases the fences or hedges have been erected by the Council
- Only very tall fences or hedges create a high degree of exclusive private use and fees should only be applied if height obstructs views.
- Most people with encroachments of 50 square metres or less did not build the encroachment and have a reasonable expectation that they would not be subject to fees when they purchased their properties.

A few submitters recognised that fences or hedges that obstruct public access should incur fees but thought there need to be clear guidelines around the definitions of fences and hedges.

Question 5: The Council proposes that the value of new airspace leases (e.g. for private balconies above legal roads) be determined up front and a single fee be made that covers the life of the lease. What are your views on this proposal?



Thirty-nine percent of submitters who used a submission form responded “neutral” to this question, reflecting the fact that the implications of airspace leases are less relevant to the mainly suburban dwellers who responded to the consultation. Similarly, this issue was not typically raised in oral submissions or in those written submissions not using the form.

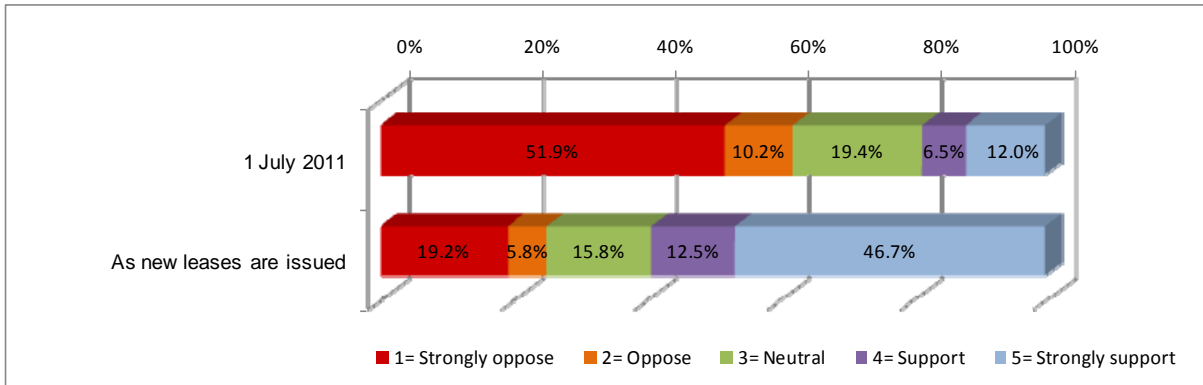
Thirty-seven percent of submitters using the form opposed up-front fees for the life of a lease and 24% supported them.

A small number of submitters commented separately on this issue. One submitter opposed the change to a single fee for the lifetime of a lease on the grounds that purchasers of apartments have as much responsibility to be aware of their rating and leasing obligations as other ratepayers.

Another submitter noted that the owners of balconies, mainly in Wellington central where they are likely to be subject to a more significant fee rise, have no choice but to pay fees charged for airspace encroachments (it would be costly and impractical to remove a balcony) and considered that Council needed to exercise restraint in this area.

One submitter considered that the requirement for \$100,000 public liability insurance was inadequate and should be increased.

Question 6: The Council is consulting on two options for when any changes to the Road Encroachment and Sale Policy, including any changes to fees, might come into force. What are your views on these options?



Of the submitters who used a submission form 59% favoured fee changes becoming applicable as new leases are issued. Only 19% supported an implementation date for the proposed changes of 1 July 2011.

Fifteen submitters commented on this issue separately in their submission. The majority (9) considered that changes should only take effect on the sale of a property or the issue of a new licence. One submitter agreed but thought that a sunset period of 5 years could be introduced to prevent the transition happening too far in the future.

Two submitters supported introducing the changes in July 2011. Three submitters supported a finite date but did not favour a specific date.

Q7: Do you have any other concerns or views about fees are set?

Responses to this question are reflected in the summary of issues and themes above in the commentary in this section.

Appendix two:

Officers' Responses to Submissions on the Review of the Road Encroachment and Sale Policy

	Submitter comments	Officers' Response
Theme 1: Consultation Process was inadequate		Officers consider that the consultation process was appropriate for the nature of decisions being considered and that it was sound both in terms of notification and the information provided.
	Notification of the public was inadequate.	<p>Officers consider the notification of the consultation process was adequate and appropriate. Officers note the comments of one submitter (Herbert Gardens Limited) that considered the notification was inadequate, yet went on to describe how the company had become aware of the proposals from three different sources (via a director who saw the Wellington Page, a resident who saw it in a public library, and the flyer).</p> <p>The consultation period (8 June to 8 July) provided 23 working days for submissions - Council's Engagement Policy cites 20 working days as 'usual'. The consultation was notified as follows:</p> <ul style="list-style-type: none"> • article in the Wellington Page of the Dominion Post on 8 June. • consultation document, summary document and electronic submission form live on WCC website on 8 June • consultation documents and summary documents available from all public libraries and the Service Centre from 8 June • media statement issued on 8 June • information sent to all property owners with an encroachment licence or lease (5800 approx.) posted week commencing 14 June • consultation advertised in the Wellingtonian on 17 and 24 August • All submitters were acknowledged and advised of their right to make an oral submission to Council.
	The brochure provided to each household with an encroachment did not make it clear how significant the implications might be for them.	The purpose of the one-page brochure delivered to affected households was to notify encroachment licence/lease holders of the consultation, provide a summary of the proposed changes and provide details of how to make a submissions and where and how to access the full consultation document. The full consultation document more clearly set out the implications of the proposed policy change. The brochure noted that the approach for setting fees was being considered in the consultation process.

	<p>There was a lack of information about what was actually being proposed by way of fees. This meant that comments were not based on adequate information about what fee increases might eventuate.</p>	<p>Council decided to consult on principles before separately consulting on rental rates. This was done to encourage submitters to focus comment broadly on principles of charging. Despite this, many submitters made an assumption that any change from the status quo would necessarily mean considerably higher fees across the board. Accordingly a number of submitters did not appear to have given objective consideration to the principles or objectives in the proposal. While acknowledging that a lack of detail on fee proposals did lead to some misunderstandings, officers do not consider it invalidated the consultation process.</p>
	<p>Any consultation on actual rental fees should not be included in the Draft Annual Plan process, but rather should be a stand alone process.</p>	<p>The Council sets fees and rates using the annual plan /LTCCP processes. These processes include full public notification and consultation. Officers consider this is the appropriate mechanism by which rental rates for encroachment licences should be set.</p>
	<p>There was inadequate analysis and supporting evidence, especially for the proposed changes to the fee approach.</p>	<p>Officers consider that the consultation document was appropriately pitched for its general audience. It contained information on land values and estimated market rentals and analysis of how these compared to encroachment rental fees. It also provided a summary of each key proposal or option and a brief description of the pros and cons of each. For those submitters seeking further information, the paper considered by the Strategy and Policy Committee was available on the Council's website.</p>
<p>Theme 2: Encroachments provide 'Public Good' and fees should reflect the public good being provided</p>		<p>Officers do not agree that the provision of public goods by encroachments provides a rationale to discount rental fees. Encroachments are primarily for exclusive private benefit. The provision of public goods, if any, is an unsolicited by-product of the encroachment of unknown quantity and quality. The Council does not provide support for the many other public goods that are provided as a by-product of private investment or activities.</p> <p>This situation is very different from the Council, say, agreeing to support a sports club or community group to generate public benefits – since in those cases the Council consciously and through an appropriate process decides both the quantity of public goods it wishes to secure and the maximum support it will provide.</p>
	<p>Getting cars off the street (by providing encroachments for car parking structures) makes roads safer and more passable.</p>	<p>A structure that facilitates the removal of a car from the road may deliver public safety benefits but it also provides obvious exclusive private benefits. The provision of public benefits is not, however, clear cut. For example, in some cases cars on the street can act to calm traffic. In addition, providing an encroachment for off street parking will generally mean that there is one less car park available for other members of the public to use.</p>

		<p>In any event, the issue of the council subsidising the provision of public goods and the fees it charges for the use of its assets should be considered as separate issues. For example, if off-street parking does provide a public good which the council is prepared to subsidise, then it should provide equal subsidies to all ratepayers providing this same service - including those who put off-street parking on their own land – not just subsidise those who use council land for off-street parking.</p>
	<p>Property owners looking after unformed legal road save the Council money and beautify the city.</p>	<p>Where property owners are managing unformed legal road but are not excluding public access, there are no rental fees payable. This policy is not proposed to be changed. Property owners choosing to beautify areas of unformed legal road often do so primarily for the benefits this provides to them.</p>
	<p>The Council doesn't look after land properly, leaving property owners to do it without compensation.</p>	<p>Finally, the marginal cost to the Council of managing unformed legal road is, in most cases, negligible. Typically there will be very little financial benefit in terms of operating costs from having private property owners manage areas rather than the Council.</p>
<p>Theme 3: Council already does well from encroachments</p>		<p>The Council should seek to manage its assets in a prudent and efficient manner in the interest of the wider community. Evidence shows that, over all, the Council is generating a poor rate of return from these assets in private use. For example, based on the current fixed fee of \$11.48/m² around 80% of encroachment licence holders are paying less than 50% of the estimated market rental rate for the land. 50% of licence holders are paying less than a third of market rates, and 25% are paying less than a fifth of market rental rates. Officers, based on discussions with land valuers, consider a reasonable rental rate for encroachment land should typically be around 50% of market rental rates.</p> <p>In addition, the current policy makes significant amounts of land available for exclusive private use (fenced or hedged land) with no charge. This lowers returns still further. It also means that the Council is effectively subsidising a group of ratepayers to the detriment of the wider community. The flat rate approach means that the rate of subsidy increases as the value of surrounding property increases.</p> <p>Officers consider changes to rental fee rates and the 50 square metre free policy are justified in the interests of the Council exercising prudent financial stewardship over the use of its assets.</p>

	<p>The proposal on fees is just a revenue grab by Council – returns are already fair given the quality of the land and the encumbrances over it.</p>	<p>Currently ratepayers are getting a low return for the private use of public assets. If the Council wishes to generate a reasonable return on assets for the benefit of all ratepayers then both rental fees and the policy on 50m² free land would need to be revised.</p>
	<p>Where encroachments add value to properties, Council will receive extra rates income - therefore fee increases are double dipping.</p>	<p>This argument is not valid for a number of reasons. First, the Council sets rates by setting a total target rate income, then distributing this according to capital land values. The value of an individual property makes no difference to the Council's total rate take. Second, the value of encroachments is not included in rateable property values. Third the issues of rental returns on Council-owned assets and rates income are not related - rates fund Council activities and services; rentals are for the private use of Council assets. Even if these issues were related the income generated from rates would not provide a meaningful return on asset values for the Council. Rates are typically around 0.5% of capital value, whereas a reasonable annual rental return is typically 6-8% of asset values.</p>
	<p>The Council paid nothing for the land in the first place - it is held by the Council on behalf of property owners.</p>	<p>The Council holds legal title to the land. Section 318 of the Local Government Act 1974 vests fee simple ownership of all non-government roads in the council of the district in which they are situated.</p> <p>As a generic point, what the Council may or may not have paid for an asset is irrelevant to its existing value or to what is a reasonable rate of return on that asset. This is a key principle of economic efficiency and asset management and applies regardless of whether an asset is private or Council owned.</p>
	<p>The land has no other value - some submitters suggested it was waste land.</p>	<p>Unformed legal road can have many public values including for biodiversity, maintaining vistas and open space, recreational use, providing infiltration of water runoff, and protection of the formed carriageway. In some cases the land may also be valuable to adjacent property owners (provided this is not inconsistent with public values of the land). In some cases the land can be extremely valuable if its use allows subdivision or development of the adjacent land.</p> <p>Under the current and proposed policy, Council has the ability to waive fees where a fence or a wall has been relocated to improve public safety or where land is so steep as to be unusable for other purposes.</p>

	<p>It is the value of the improvements made by property owners that makes the land valuable – therefore fees are charging landowners twice.</p>	<p>Officers, based on valuers’ advice, do not accept this argument. Land value is set by its highest and best use. This value exists regardless of whether the land is actually being applied to that use. The same is true for encroachment land. For example, it is not the act of putting a parking structure on the land that gives the land its value; it is the <u>potential</u> to put such a structure on the land that creates value.</p>
	<p>The costs of administering the proposed new fee approach would be greater than the benefit.</p>	<p>Officers recommend the differential fee approach to setting encroachment rental rates. If this approach were adopted the administration costs would not differ significantly from the current ‘flat fee’ approach. Officers agree that the individual valuation approach (not recommended) would have significant administration costs.</p>
<p>Theme 4: Gross imbalance of power between the Council on encroachment holders</p>		<p>Officers note that encroachment holders have voluntarily entered agreements that provided for fees to be set at the sole discretion of the Council and termination on one month’s notice.</p> <p>Notwithstanding the Council’s clear rights, it is appropriate for the Council to be cognisant of the implications of its decisions for individuals and their ability to respond / adapt to changes.</p> <p>Officers, therefore, recommend an upper limit of \$30 m per square for rental fees. Officers also note the option to phase-in fee changes (see later discussion) and recommend further work on facilitating the stopping and sale of surplus unformed legal road. Officers do not recommend changing the one-month termination provisions of encroachment licences, as this arises from the land’s status as legal road.</p>
	<p>Council can put up fees at will. Once property owners have established structures, they have little choice but to pay whatever charges the Council imposes.</p>	<p>This argument is acknowledged, given that once a structure (other than a structure for access only) has been erected, property owners must either continue to pay whatever fee the Council sets or face the cost of removal of the structure.</p> <p>However, all encroachment licence holders signed agreements that provided for structures to be removed with one month’s notice and fees being set at the sole discretion of the Council [as landowner]. Property owners who have decided to construct elaborate difficult to remove structures did so in the knowledge that these could be required to be removed at any time and/or rental fees may rise. The Council should not now be limited in its policy response or its approach to fee setting because property owners made decisions to construct (or purchase properties with) difficult to remove structures.</p>

		<p>One option would be to place limits on the maximum price per square metre that could apply to an encroachment licence. Officers recommend a maximum rental fee of \$30 per square metre (discussed under theme 5 below). Finally, providing property owners with a better option to purchase surplus encroachment land may be a useful alternative to renting in cases where landowners are dissatisfied with rental fees.</p>
	<p>Licences can be revoked with one month's notice. This is unfair and creates large uncertainties. Also, perversely, it leads to property owners being unwilling to invest in maintaining structures to a high standard.</p>	<p>The ability to remove structures with one month's notice is written into all encroachment licences. This reflects the land's status as road – a public asset with particular characteristics, including the public's right to access such land.</p>
<p>Theme 5: Affordability and reasonable expectations</p>		<p>The issues raised under this theme are similar to those discussed under theme 4 above. While the argument is acknowledged, it must be considered in light of the fact that encroachment holders voluntarily entered agreements in the knowledge that the Council retained sole discretion over certain key conditions. As with theme 4, officers consider that setting maximum levels of rental fee rates would help address these concerns.</p> <p>The issue of fences and hedges was raised specifically in relation to property owners' "reasonable expectations" that 50 square metres of land would be available free. This issue is discussed under the relevant theme below.</p>
	<p>People on fixed incomes cannot afford significant increases in rental fees. Just because people have valuable properties (which they may have lived in for many years) does not mean they have the means to pay substantial increases in fees.</p>	<p>Officers accept that applying a strictly formulaic approach to setting fees under any differentiated fee approach could lead to substantial and potentially unaffordable fees increases. For example if fees were set at 50% of market rates, then some suburbs (such as Roseneath, Oriental Bay and Thorndon) might see a fee increase from \$11.48 to \$50 or even \$80 per square metre in the case of Oriental Bay. Officers do not consider such increases are sustainable. It is recommended that the Council sets an upper limit for rental rates of \$30 per square metre. This would increase a typical parking encroachment in an inner suburb (of approximately 18 square metres) from around \$206 a year to \$540 a year. If a \$35 limit were applied the annual fee would rise to \$630 per year.</p>

	<p>People made decisions, such as building fences, based on a certain set of rules. It is unfair for Council to now change those rules and impose large extra costs.</p>	<p>Officers do not agree with this argument. The Council retains full discretion in respect of fees and the right to cancel licences and require the removal of structures with one month's notice – rights that are written into all encroachment licences. In these circumstances property owners cannot reasonably claim reliance on an implied guarantee that the Council would not change the conditions of encroachments.</p>
	<p>People were encouraged to park cars off the street – the proposed changes would penalise people who have done this in the past.</p>	<p>It is not Council practice to encourage reluctant property owners to take encroachments. That said it is possible that over the years a range of positions may have been expressed by Council staff. It is probably not now possible to verify any such conversations.</p> <p>The key issue is that all encroachment licences clearly lay out the terms and conditions of encroachment licences, including the Council's right to, at its sole discretion, amend fees and terminate licences with one month's notice.</p>
<p>Theme 6: Perverse Outcomes</p>		<p>It is possible that some encroachment holders will remove structures in order to avoid paying increased fees. However, officers do not consider this is likely to be significant, and note that a limit on the maximum rental rate would assist in this respect. The definition of "hedge" needs careful consideration in order to ensure it does not capture dense planting of desirable vegetation.</p>
	<p>The proposed [fee] changes will lead to perverse outcomes – for example, people will rip down structures and Council will get no income, fences will be pulled out and land will no longer be looked after.</p>	<p>It is possible that some encroachment holders will remove structures in order to avoid paying increased fees. However, officers do not consider this would be likely in the case of parking structures (which generate most of the Council's income), since the value of parking to property owners will still be greater than any increased fees. A limit on the maximum rental rate will assist in this respect. For example based on \$30 per square metre, the rental fee for an average parking encroachment in an inner suburb would increase from \$206 to \$540 per year. A \$540 per year fee has a capitalised value of \$7,700. Officers have advice that an encroachment licence providing exclusive parking in suburbs like Roseneath and Thorndon can add up to \$35,000 to a property's value. This means that a rental fee of \$540 per year is still good value for property owners compared to how the market actually values such parking.</p> <p>In respect of the removal of fences, officers note that the Council does not presently generate income from the majority of fenced encroachments, and those that it does are for only the area above 50 square metres. Overall, officers consider there are likely to be strong net advantages from making changes to the 50 square metre policy.</p>

	<p>People will clear vegetation that might be considered a hedge.</p>	<p>The definition of “hedge” will need careful consideration in order to ensure it does not capture simply dense planting of desirable vegetation. The definition should be based on the level of privatisation, as assessed by Council officers, created by the hedge.</p>
	<p>Buying a resident’s parking permit is cheaper than paying an encroachment fee and building a parking structure. If fees go up people will abandon their encroachments and park on the street. This will add to congestion on already narrow streets.</p>	<p>It is for home and vehicle owners to determine the utility for them of a resident’s parking permit (allowing them to park on the street) compared to a garage (affording exclusive off-street parking and storage). It is not expected that fees will increase to a point where residents are motivated to remove structures or alter their current arrangements (see discussion above). Setting a maximum limit on rental rates will assist in this respect.</p>
<p>Theme 7: Approach to setting rental rates</p>		<p>Officers consider that moving to a differentiate fee approach is justified and consistent with the LGA; noting submitters’ concerns over potentially very high fee increases and officers’ recommendation that maximum rental rate be limited to \$30 per square metre.</p>
	<p>A flat rate is simple to understand and fair.</p>	<p>A flat rate approach is transparent, simple and relatively low cost to administer. However, it creates large inequities between property owners in different suburbs. For example the current fee rate of \$11.48 per square metre means that property owners with encroachments in suburbs like Grenada Village, Newlands and Tawa are paying 80 – 100 percent of the market rental rate for ordinary freehold land in their suburb. Other encroachment holders in suburbs like Thorndon, Mount Victoria and Oriental Bay are paying only around 10 percent of freehold market rental rates.</p> <p>The Council aims to ensure that whatever system of charging is adopted is administratively simple and easy to understand. A differentiated fee approach can achieve these outcomes.</p>
	<p>There is as much variation in land values within suburbs as between suburbs and between types of encroachments (such as garages compared with car pads or flat land versus steep land) – therefore differentiated fees are not inherently “fairer”.</p>	<p>In essence these arguments support an approach using individual valuations as opposed to retaining the status quo. Officers consider that such an approach would be time consuming, administratively costly and impractical to implement. While the proposed differentiated fee approach does not have the ability to recognise varying land values in pockets within suburbs, it does recognise that there are difference between suburbs, which is more than flat rate mechanism is able to do.</p>

	<p>The 'utility' of an encroachment is the same regardless of which suburb it is in.</p>	<p>Officers do not agree with this argument. Though a carpad in Tawa and Roseneath might have the same purpose, the 'value' of the structures will vary markedly between those suburbs. This is because there are typically fewer alternative car parking options in Roseneath and land prices are higher.</p>
	<p>The value of land varies between suburbs and it is appropriate to determine rental fees that more closely matched those values.</p>	<p>Officers agree with this argument.</p>
	<p>Individual valuations of encroachment land, which can take into account individual circumstances, are the fairest option.</p>	<p>Officers agree that individual valuations are the most objectively and fairest way of determining the rental fee for an encroachment. However, individual valuations are likely to be costly given the large number of encroachments. Valuers would need to make individual and complex assessments potentially costing hundreds of dollars per valuation. These valuations would be based on assumptions and would be open to dispute and challenge.</p> <p>One submitter thought that individual valuations could be derived from the market value of each adjacent property as opposed to each suburb. Officers analysed this option and concluded that it would lead to large and unjustified variations in encroachment rental fees.</p>
<p>Theme 8: Fences and hedges and the 50sqm free policy</p>		<p>Fencing of unformed legal road land will typically create exclusive private use of the land. Officers consider that it is appropriate for the Council to charge rental fees for all land that is fenced. Hedges can equally limit access to lead to exclusive private use of unformed legal road. In those cases it is appropriate that hedges be treated in the same way as fences. The definition of "hedge" needs to ensure it does not include dense plantings of vegetation that does not have the effect of providing exclusive private use.</p>
	<p>Fences established for safety should be automatically exempt rather than relying on officers' discretion to grant an exemption</p>	<p>Determining whether a structure addresses a public safety concern or not will inevitably require human judgement. Officers, therefore, do not consider an automatic exemption is practical.</p>

	<p>Policy on what is a fence and (especially) a hedge is not clear and will lead to disputes and perverse outcomes (see above).</p>	<p>Officers agree that unless clear definitions are provided, there may be ongoing disputes and perverse outcomes. Officers have made recommendations for definitions in the revised policy.</p>
	<p>Fences have more “taking” effect than some other structures, therefore charging fees for fences is justified.</p>	<p>Officers agree that fencing land will typically create exclusive private use of the land. It is therefore appropriate for the Council to charge rental fees for all land that is fenced. Hedges can equally limit access to lead to exclusive private use of unformed legal road. In those cases it is appropriate that hedges be treated in the same way as fences.</p>
<p>Theme 9: Overwhelming support for purchasing unformed legal road</p>		<p>Increased sales of surplus unformed legal road can provide benefits to the wider community (for example through enduring parking solutions, allowing intensification without urban sprawl, and additional income to the Council) as well as private benefits. Options to facilitate the stopping and sales of surplus unformed legal road should be explored further.</p>
	<p>Much of the land will never be used for road and the road stopping and sale process should be more attractive for property owners.</p>	<p>There was near universal support for better mechanisms to facilitate the stopping and purchase of unformed legal road. This can have benefits for the wider community and for property owners. Across Wellington there are probably significant areas of the unformed legal road that will not be required for public uses. However, it is not possible to apply a simple formula to determine this, since there are many site specific issues to consider as well as the views of the local community. Proposals for road stoppings will, therefore, need to be considered on a case by case basis.</p>
<p>Theme 10: Timing of Changes</p>		<p>Officers recommend that the Council adopts transitional measures when implementing the two key recommended changes to fees (that is the differentiated fee approach and changes to the fences and hedges policy). This approach will: help mitigate the effect of the changes for many existing owners; allow property owners time to adapt to the new regime; and help address the concerns raised under themes 4 and 5 in particular.</p> <p>With respect to the fences and hedges policy, officers recommend that changes take effect only in respect of new licences , including new licences issued when properties are sold.</p> <p>Officers recommend that new fee rates under a differential fee structure be phased-in with changes commencing from 1 July 2012. Officers recommend that fees increase by not more than an additional \$5 per square metre per year until the appropriate fee rate is reached. Any fee reductions would be introduced from 1 July 2012.</p>

		<p>Assuming transitional measures are agreed, it is recommended that all other changes to the Policy should take effect immediately. This would allow applications for new licences to be considered under the new policy framework (noting that the existing rental rate policy will apply for the first year of those licences).</p>
	<p>Changes should only take effect on the sale of a property or the issue of a new licence.</p>	<p>Roughly 10% of encroachment licences are reissued each year when properties are sold. Applying this approach to fees would mean that it would take many years before a consistent pricing structure was applied across the city. Officers' recommended approach is for set transition from 1 July 2012 to avoid fragmented and inequitable pricing across the city.</p> <p>In respect of changes to the fences and hedges policy, officers recommend that these changes take effect only in respect of new licences and reissued licences, for example when properties are sold. This will allow time for officers to assess each encroachment over a period of time.</p>

Appendix 3:

ROAD ENCROACHMENT AND SALE POLICY

April 2011

**Note: revisions from the draft policy released for
consultation in June 2010 are highlighted**

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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.

Hedge in respect of the definition of a “structure”, is a dense area of vegetation that is predominately linear and that has the effect of excluding the public from an area of legal road so that an adjacent property owner may enjoy the private use of that legal road.

Legal road has the same meaning as in the Local Government Act 1974². 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.

² The relevant sections of the 1974 Act were not repealed when the 2002 Act was passed.

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 7: Further Information).

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 consents³.
- 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.

³ Examples of other regulatory consents that might be required include a Resource Consent and/or Building Consent.

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.

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.

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 \$1,000,000 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.

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 management plan or Reserve Act. Property owners should contact the Council for more information (see section 7: 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 (LTP) every three years. The fees review will take into consideration the latest relevant rateable land values for residential properties across the city by suburb.

Rental fee rates will be based on a differentiated fee structure where the rental rate per square metre is set generally as a proportion of land values in a given suburb. The rate per square metre will be set at a discount to estimated market rental rates for land in the relevant suburb, recognising that legal road is generally less valuable than normal freehold land due to the uncertainties and encumbrances on it. A maximum and minimum rental rate will apply. Some grouping of suburbs may also be considered when setting rental fee rates.

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 suburb specific 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.
- For airspace leases a one-off charge covering the life of the lease may be charged (see 5.9.2).

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.

Further information on actual fees and charges can be obtained from the Council (see Section 7: 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
Special Case: Encroachment with structures that are fences and hedges only (other than structures for access only) and where the encroachment licence was in place prior to the	Annual rental payable but only for area in excess of 50m ² Minimum annual rental applies for areas in excess of 50m ²

adoption of this policy.

See definition of “structures” and explanatory note below.

Explanatory note for “Special case”: The special case implements a Council decision made when this policy was adopted that changes to the fences and hedges policy made at the time should only apply in respect of new licences. This means that when a property which has an encroachment licence associated with it is sold, or when a licence is transferred to another person, or when there are significant changes to the conditions of a licence, then the existing licence will be cancelled and a new licence will be issued (sometimes referred to as “re-issued”). In these circumstances the special case will not apply to the new licence and the holder of the new licence will be required to pay an annual rental fee for all land within the encroachment.

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.

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'⁴. 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.

⁴ 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 applicant'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 applicant.

Appendix Four: Information of different maximum and minimum fee rates and the implications for encroachment holders

				Encroachment rental rate per square metre for groups of suburbs (excl GST)	
	Freehold land value (per m ²)	Estimated market rental rate	Unlimited Encroachment rental rate	Fee rate	Annual fee (20m ² area)
Ohariu*	\$89	\$5.32	\$2.66	Group 1: \$9.00	\$180
Makara*	\$107	\$6.42	\$3.21		
Glenside*	\$153	\$9.20	\$4.60		
Grenada North*	\$178	\$10.69	\$5.35		
Makara Beach	\$203	\$12.15	\$6.08		
Tawa	\$219	\$13.14	\$6.57		
Ngauranga	\$224	\$13.42	\$6.71		
Grenada Village	\$234	\$14.03	\$7.01		
Crofton Downs	\$265	\$15.90	\$7.95		
Broadmeadows	\$268	\$16.07	\$8.03		
Newlands	\$272	\$16.30	\$8.15		
Mornington	\$288	\$17.27	\$8.64		
Woodridge	\$317	\$19.02	\$9.51		
Paparangi	\$317	\$19.05	\$9.52		
Owhiro Bay	\$319	\$19.17	\$9.58		
Churton Park	\$323	\$19.38	\$9.69		
Johnsonville	\$324	\$19.47	\$9.73		
Kingston	\$328	\$19.69	\$9.85		
Ngaio	\$338	\$20.25	\$10.13	Group 2: \$11.50	\$230
Wilton	\$338	\$20.26	\$10.13		
Strathmore Park	\$350	\$21.01	\$10.51		
Karori	\$375	\$22.53	\$11.26		
Houghton Bay	\$387	\$23.23	\$11.62		
Vogeltown	\$394	\$23.62	\$11.81		
Southgate	\$394	\$23.62	\$11.81		
Moa Point	\$395	\$23.69	\$11.84		
Melrose	\$396	\$23.78	\$11.89		
Rongotai	\$445	\$26.71	\$13.35	Group 3: \$15.00	\$300
Island Bay	\$451	\$27.08	\$13.54		
Miramar	\$464	\$27.87	\$13.93		
Maupuia	\$480	\$28.82	\$14.41		
Brooklyn	\$486	\$29.18	\$14.59		
Highbury	\$520	\$31.18	\$15.59		
Khandallah	\$520	\$31.22	\$15.61		
Breaker Bay	\$525	\$31.51	\$15.75		
Aro Valley	\$548	\$32.87	\$16.44		
Northland	\$549	\$32.93	\$16.46		
Wadestown	\$562	\$33.74	\$16.87		
Kilbirnie	\$615	\$36.89	\$18.44	Group 4: \$20.00	\$400
Lyll Bay	\$615	\$36.89	\$18.44		
Kaiwharawhara	\$643	\$38.59	\$19.30		
Hataitai	\$702	\$42.14	\$21.07		
Berhampore	\$712	\$42.71	\$21.36		
Karaka Bays	\$813	\$48.75	\$24.38	Group 5: \$25.00	\$500
Newtown	\$862	\$51.72	\$25.86		
Kelburn	\$918	\$55.09	\$27.54		

Roseneath	\$1,010	\$60.59	\$30.29	Group 6: \$30.00	\$600
Seatoun	\$1,024	\$61.42	\$30.71		
Mt Cook	\$1,030	\$61.81	\$30.91		
Pipitea	\$1,191	\$71.45	\$35.72	Group 7: \$35	\$700
Te Aro	\$1,250	\$75.00	\$37.50		
Wellington Central	\$1,271	\$76.25	\$38.12		
Thorndon	\$1,585	\$95.12	\$47.56		
Mt Victoria	\$1,672	\$100.29	\$50.15		
Oriental Bay	\$2,833	\$169.96	\$84.98		

Notes:

- estimated market rental rates is calculated as 6% of freehold land value using the 2009 rateable land valuations
- unlimited encroachment rental rate is calculated as 50% of market rental rate
- current annual fee for a 20m² encroachment is \$230 (at \$11.48 per m²)

Appendix 5: Indicative Schedule of Rental Fee Rates

	Indicative rental rate per square metre by suburb (excluding GST)
Ohariu	Group One: \$9
Makara	
Glenside	
Grenada North	
Makara Beach	
Tawa	
Ngauranga	
Grenada Village	
Crofton Downs	
Broadmeadows	
Newlands	
Mornington	
Woodridge	
Paparangi	
Owhiro Bay	
Churton Park	
Johnsonville	
Kingston	
Ngaio	
Wilton	
Strathmore Park	
Karori	Group Three: \$15
Houghton Bay	
Vogeltown	
Southgate	
Moa Point	
Melrose	
Rongotai	
Island Bay	
Miramar	
Maupuia	
Brooklyn	Group Four: \$20
Highbury	
Khandallah	
Breaker Bay	
Aro Valley	
Northland	
Wadestown	Group Five: \$25
Kilbirnie	
Lyll Bay	Group Six: \$30
Kaiwharawhara	
Hataitai	
Berhampore	
Newtown	
Karaka Bays	
Kelburn	Group Six: \$30
Roseneath	
Seatoun	
Mt Cook	
Pipitea	
Te Aro	

Wellington Central	Group 6: \$30
Thorndon	
Mt Victoria	
Oriental Bay	