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**TOWN BELT ENCROACHMENT LICENCE APPLICATION  
- 16 KOTINGA STREET**

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**1. Purpose of report**

To seek the approval of the Strategy and Policy Committee to grant an encroachment licence to the owner of 16 Kotinga Street across Town Belt.

**2. Executive summary**

The owner of 16 Kotinga Street has applied to have their current structural encroachments formalised for eventual removal at such as time as redevelopment occurs or ten (10) years whichever occurs first.

The application is consistent with the Town Belt Management Plan.

Key issues:

- The Strategy and Policy Committee holds delegation to allow a license.
- The licence enables Council to manage the encroachment with a view to regaining lost land.
- Is not a new encroachment.
- Alternative(s) would be difficult to comply with e.g. removal of a structure would necessitate building an alternative structure.
- The applicant agrees to meet all costs in relation to formalising the encroachment.

**3. Recommendations**

Officers recommend that the Strategy and Policy Committee:

- 1. Receive the information.*
- 2. Approve the granting of a license to the owner of 16 Kotinga Street to formalise an existing structural encroachment for eventual removal subject to targeted consultation.*
- 3. Agree that Council officers will finalise and negotiate the license agreement details.*

4. *Note:*

- (a) *the requirement for public advertising under Section 48 (2) of the Reserves Act 1977 be waived in accordance with Section 48(3) of the Reserves Act 1977, as the reserve and reserve management plan are not likely to be materially altered or permanently damaged and the rights of the public are not likely to be permanently affected by the granting of the licence.*
- (b) *the costs associated with preparing the licence are to be met by the applicant.*

#### **4. Background**

The Strategy and Policy Committee hold delegation to grant licences by virtue of the general management powers of the Council as trustees under the 1873 Deed and under the Reserves Act 1977. The Strategy and Policy Committee are required to evaluate identified encroachments and apply the following principles and guidelines on a case by case basis.

The overriding principles for encroachment in accordance with the Town Belt Management Plan are:

- To resolve the issues of encroachments with a view to regaining lost lands.
- To protect the Town Belt from new encroachments.

The Town Belt Management plan states that encroachment licences are an acceptable option when:

- The alternative(s) would be otherwise difficult to comply with e.g. removal of a structure would necessitate building an alternative structure which could take some time.

Where an encroachment will be managed through a licence agreement any agreement must comply with the following conditions:

- A lease or licence may be negotiated which shall have no automatic right of renewal on expiry, the applicant does have the ability to reapply.
- The removal of all encroaching features is the responsibility of the adjacent owner concerned.
- All costs, including survey costs, associated with the license shall be met by the lessee/licence holder.
- Applicant will be charged for the license in conformity with the intentions of the original Deed which were to achieve the "best or most improved rent".
- The term of the lease shall be for no more than 10 years with no automatic right of renewal and an annual rental review.

Formalising of encroachments over Town Belt land is not common and discouraged under the Town Belt Management Plan unless the above criteria are met.

## 5. Discussion

The owner of 16 Kotinga Street has applied to have their current structural encroachment formalised for eventual removal.

### **16 Kotinga Street:**



#### **Encroachment description:**

This property is a three unit rental. The Town Belt encroachment consists of a retaining wall, part of a living area and anchor for an extension to the house from 1956.

#### **Current situation:**

The current owner has had the property for just over a year. The owner has the property on the market and would like an agreement and process in place so the next owner is aware of the encroachment and requirement for eventual removal.

Immediate removal would mean that the house would not be safely anchored to the building site. An Engineers Report has verified that removal would severely compromise the integrity of the building.

The applicant has agreed to meet all costs in relation to formalising the encroachments. The applicant understands that no ownership of the land is inferred by the licensing process and the ultimate aim of formalising the encroachment is eventual removal.

## **5.1 Options**

The following options have been considered as potential outcomes:

Option A – Status quo – no change to existing scenario

- This option does not address the existing concerns of the resident or policies of the Town Belt Management Plan.

Option B - The owner of 16 Kotinga Street immediately remove the existing structural encroachments at their expense.

- Option B does not address the historic nature of the encroachment or the technical difficulties associated with the anchoring of the structure. It would require significant earthworks and may not be technically possible without a complete rebuild. There would be significant disturbance to the reserve.

Option C - Allow licence over Town Belt with agreement to remove on redevelopment at such time as the property is redeveloped or for ten (10) years, whichever is soonest.

- This option is consistent with the Town Belt Management Plan reinstatement. It also allows Parks and Gardens management control through the license agreement and is therefore the preferred option.

Officers recommend that Option C be implemented and that the licence agreement includes the conditions specified in the Town Belt Management Plan. In addition the encroachment will be registered on the Certificate of Title and no further encroachment or development of the existing encroachment allowed.

## **5.2 Significance Assessment**

The granting of this licence over Town Belt is not considered to be significant under Council's Significance Policy because it is consistent with the Town Belt Management Plan.

The content and recommendations in this report are consistent with the requirements of sections 77 through 82 of the Local Government Act 2002 and that the decision-making requirements have been met.

## **5.3 Consultation and Engagement**

Council officers recommend that the requirement for public advertising/notification under Section 48 (2) of the Reserves Act 1977 be waived in accordance with Section 48(3) of the Reserves Act 1977. The reserve and the reserve management plan are not materially altered or permanently damaged by allowing licensing.

The Point Nicholson Block Settlement Trust has been consulted and has no objection. The Friends of the Wellington Town Belt have also been consulted and wish to see included in the license agreement a covenant that the licensee will not seek any greater form of ownership. This is consistent with the intention of the licence agreement and can be provided for.

#### **5.4 Financial Considerations**

Applicants are to cover all costs except staff time. Any income from the licenses to be spent on Town Belt improvements (as described by the Town Belt Management Plan).

#### **5.5 Climate Change Impacts and Considerations**

Not applicable.

#### **5.6 Long-Term Council Community Plan Considerations**

Not applicable.

### **6. Conclusion**

Council officers recommend that the Strategy and Policy Committee approves the granting of a licence to the owner of 16 Kotinga Street. Council officers are satisfied that the Town Belt Management Plan criteria for a licence have been met.

Contact Officer: *Johnnie Barrie, Reserves Planning Officer.*

## Supporting Information

### **1) Strategic fit / Strategic outcome**

*The granting of a license over Town Belt does not link to any specific strategic outcome.*

### **2) Long-Term Plan / Annual Plan reference and long term financial impact**

*There is no financial impact as the applicant is responsible for all costs except staff time.*

### **3) Treaty of Waitangi considerations**

*There are no known Treaty issues affecting this matter.*

### **4) Decision-making**

*This is not a significant decision. The report sets out a number of options and reflects the views and preferences of those with an interest in this matter.*

### **5) Consultation**

#### **a) General consultation**

*The requirement for public advertising/notification under Section 48 (2) of the Reserves Act 1977 are recommended to be waived in accordance with Section 48(3) of the Reserves Act 1977.*

#### **b) Consultation with Maori**

*PNBST supported this application.*

### **6) Legal implications**

*The agreement will be subject to the provisions of the Town Belt Management Plan and the Reserves Act 1977. Legal advice will be sought in the preparation of the agreement.*

### **7) Consistency with existing policy**

*Request is consistent with the Town Belt Management Plan 2004.*