

REPORT 1
(1215/52IM)

**TOWN BELT ENCROACMENT LICENCE APPLICATION
– 104 ELLICE STREET**

1. Purpose of report

To seek Strategy and Policy Committee's approval to issue an encroachment licence to the owners of 104 Ellice Street across Town Belt.

2. Executive summary

The owner of 104 Ellice Street in Mount Cook 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 licence.
- The licence enables Council to manage the encroachment with a view to regaining lost land,
- This is not a new encroachment
- Alternative(s) would be difficult and onerous to comply with e.g. removal of the retaining wall would necessitate building an alternative structure.
- The applicant 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.
- Encroachment licences sit with the current property owner only. If the property sells a new owner will be required to apply for a fresh encroachment licence at which time Council is not under any obligation to extend a current licence to a new owner.

3. Recommendations

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*
2. *Approve the granting of a licence to the owner of 104 Ellice Street to formalise the existing encroachment for eventual removal.*

3. *Agree that Council officers will finalise and negotiate the licence 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 otherwise be difficult to comply with e.g. removal of the 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 re apply.
- The removal of all encroaching features is the responsibility of the adjacent owner concerned.
- All costs, including survey costs, associated with the licence shall be met by the lessee/licence holder.
- Applicants will be charged for the licence 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 104 Ellice Street has applied to have their current structural encroachment formalised for eventual removal.

104 Ellice Street:



Encroachment description:

This property is a private residence with a rental property beneath. The encroachment consists of part of the house, part of the garage, part of a driveway and a footpath and retaining wall that run alongside the house. The house and garage date from pre-1930. It is unclear when the path and retaining wall were built but plans prepared for a previous owner in 1997 show the wall as an existing feature.

The site topography is such that the house, retaining and driveway encroachments are down a steep bank in relation to the reserve. The garage is at street level to one side of the reserve access and appears to be part of the established streetscape.

Encroachment history:

Council Officers identified this encroachment in 1998. A 2 meter wide strip of land (approximately 80m²) was offered to that owner via a lease. This was not taken up; the owner appears to have disputed the need to pay.

In 2000 a new stormwater drain and retaining wall were constructed at the property. This is part of the Council stormwater main network.

In 2002 Council Officers recommended a sunset clause for any agreement and the encroachment be put on the properties Certificate of Title. There was no further discussion or action taken.

Current situation:

The current owner bought the property in 2011. They were not aware of the encroachments when they bought the property.

Immediate removal of the structures is impractical and would cause a large financial burden to the applicant with no immediate benefit to reserve users. There is no public access to the encroachment area. The encroachments are not detrimental to potential ecological values or recreation use of the reserve. The garage building is well kept and does not detract from the character or value of the reserve.

The property owner has agreed to remove the asphalt area of driveway. This will leave the Council stormwater drain and retaining as an isolated structure at the bottom of a bank.

Officer recommendation:

- License for removal with the Council stormwater intake not included in the licensed area. Refer to Appendix 1 for a map.

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 to formalise some type of arrangement with Council or Council policy to manage encroachments.

Option B - The owners of 104 Ellice Street immediately remove all of the existing structural encroachments at their expense.

- Option B would be expensive for the property owner. Removal of the retaining wall would need to be investigated further in terms of feasibility. Removal of part of the house is impractical. Removal of the garage would require resource consent and building consent. There would be no benefit to the public in terms of Town Belt use other than the principle of returning land to Town Belt.

Option C - Allow a licence over Town Belt with agreement to remove on redevelopment. Driveway area removed.

- This option allows an affordable and practical solution to the residents. It also allows Parks, Sport and Recreation management control through the licence agreement and is therefore the preferred option. This option is consistent with current Town Belt Management Plan policy.

Officers recommend that Option C be implemented. This option will allow the owners of 104 Ellice Street a cost effective solution. Council will manage the encroachment with a view to eventual removal.

5.2 Significance Assessment

The granting of a licence over Town Belt, in these cases, is not considered to be significant under Council's Significance Policy. This is 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.

Friends of the Town Belt are to be consulted.

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 and Charter).

5.5 Climate Change Impacts and Considerations

Not applicable.

5.6 Long-Term Plan Considerations

Not applicable.

Contact Officer: *Bec Ramsay, Reserves Planning Officer, Parks, Sport and Recreation*

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

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

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

There is no financial impact as the applicants are 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

Through the Town Belt Management Plan development.

Direct consultation with applicant and friends of Town Belt.

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

No consultation required.

6) Legal implications

The agreement will be subject to the provisions of the Town Belt Management Plan and the Reserves Act 1977.

7) Consistency with existing policy

Request not covered in existing policy or bylaws.