



POLICY ON

PRIVATE USE OF HUTT CITY COUNCIL LAND

1 PURPOSE

The purpose of this policy is to:

- describe Hutt City Council's (Council's) position on the private use of land owned and managed by Council;
- outline the situations in which such private use will be considered by Council; and
- outline the steps that must be taken when a person (being an organisation or individual) wishes to use Council land for their own use on a long term basis.

2 SCOPE

This policy applies to:

Applications by third parties to Council for:

- The long-term private use of Council land where Council wishes to retain ownership or management of land.
- Use of:
 - a) Roads;
 - b) Drainage reserves;
 - c) Reserves (irrespective of their legal status under the Reserves Act 1977);
 - d) Any other land owned or managed by Council; and
 - e) Space above and below ground level on Council land (e.g. building overhangs).

Exceptions

There are a number of matters outside the scope of this policy. For example, requests for short term use of land (such as for a one or two day event) or a request to purchase land. These matters are addressed on a case-by-case basis by the Asset Manager responsible and in accordance with applicable legislative requirements.

3 DEFINITIONS

For the purposes of this policy:

- **“Drainage reserve”** is land set aside for Council during land development for stormwater and wastewater drainage, water supply reticulation or the right to lay these services in the future. Drainage reserve often includes one or more of the following: overland and underground streams or watercourses; open storm water drains; underground stormwater, wastewater and water pipes. The watercourses, drains and pipes often serve more than one property.
- **“Private use”** refers to all use of Hutt City Council land by any person (being an organisation or individual) other than Council or one of its contractors.
- **“Long term”** refers to any use of Hutt City Council land that is greater than 3 months if the use is continuous, or greater than six months if the use is not continuous.

- “**Council land**” refers to Roads, Drainage reserves, Reserves as well as all other Council owned or vested land, land managed by Council and the airspace above such land.
- A “**Licence**” refers to:
 - a) A **Licence to Occupy**, which is a licence issued for access to and/or private use of (vacant) Council land, where no structures will be permitted. It includes all forms of access provided; including permits and profits a prendre.
 - b) An **Encroachment Licence**, which is a licence issued for private use of Council land where structures will be permitted.

Private use allowed under a Licence may not necessarily allow exclusive use of the land in question.
- A “**Lease**” refers to an agreement between the parties under which the terms and conditions are binding on both parties. Terms will include a specified period- usually with a right of renewal, and rental review periods.¹
- “**Reserve**” refers to all of the land managed by the Leisure Services Division of the Hutt City Council. Although some of this land has status under the Reserves Act 1977, the majority has none. Regardless of any Reserves Act status, the Council manages all of its reserve land assets as if the land has such status.
- “**Road**” has the meaning set out in section 315 of the Local Government Act 1974 and includes land formed or laid out as road, footpaths, access-ways, berms at the sides of formed road, and land vested in Council or held by Council for roading purposes.
- “**Easement**” refers to a right to use Council land for a particular purpose only (e.g. to pass across Council land or for services under or over Council land). Easements are normally in perpetuity and have clear agreements setting out the right to use the Council land which are registered on both the Council title and the User’s title. Easements can not be granted over “road”.

4 NEW, EXISTING AND UNAUTHORISED USE OF COUNCIL LAND

Subject to any statutory right of ongoing use, from the date of enactment, all future requests for private use of Council land will be treated in accordance with this policy.

All current leases and licences will continue to be upheld as per their current conditions, until the term (including any options to renew that are able to be exercised by the tenant) expires.

Council will seek to formalise all existing unauthorised private uses of Council land in accordance with this policy on a priority basis as they are brought to Council’s attention. In such cases the existing unauthorised use will be treated in the same manner as an application for a new use under this policy. If the current use would not have been given Council approval then that use will have to cease and any building and/or fixtures removed, to a standard acceptable to Council, at the owner’s expense.

5 COUNCIL’S GENERAL POLICY POSITION

Council’s overall position towards the private use of Council land is that Council holds and manages land for specific purposes, and this purpose takes priority over any proposed private uses that are contrary to the purpose of Council.

¹ Note i: Under the Reserves Act 1977 there are special conditions in relation to leases and licenses over Reserve managed by Councils.

This policy does not in anyway override these.

Note ii: While a lease can apply to land or buildings, or both, this policy only applies to the leasing of land, not buildings.

Use of Council land is discretionary. This policy gives guidance on how that discretion will be exercised but Council reserves the right to make decisions on use of the land other than in accordance with this policy.

6. GENERAL CONSIDERATIONS

The Council will make a judgment with each application it receives under this policy as to how a decision on the application ought to be made. The process provided below is a general indication of the steps it intends to take on such applications.

STEP ONE: SIGNIFICANCE

COUNCIL'S GENERAL POSITION	Explanation/Notes
<p>SIGNIFICANCE IN ACCORDANCE WITH POLICY</p> <p>The Council will, upon receiving an application, determine the significance of the application in accordance with any policy under section 90 of the Local Government Act 2002 that may, for the time being, be applicable.</p> <p>The determination of significance will in turn determine the scale and extent of the Council's steps at each stage of the process provided in this clause.</p>	<p>It is not necessary to follow the same decision-making processes for every application. The Council will consider at the outset the importance of the application in order to consider the scale and extent of the steps then taken.</p>

STEP TWO: IS THE USE OF COUNCIL LAND REALLY NECESSARY?

COUNCIL'S GENERAL POSITION	Explanation/Notes
<p>APPLICANT'S ABILITY TO USE OTHER LAND</p> <p>Wherever practical, applicants wishing to use Council land should first attempt to use their own land, or make arrangements with other private parties.</p> <p>A list of steps taken to make such arrangements should be given by the applicant and reasons given as to why those options are not favoured.</p>	<p>The person(s) with the authority to make the decision will need to be convinced that the use of Council land is the best option available for the application.</p>

<p>ABILITY TO USE COUNCIL LAND FOR THE PROPOSED PURPOSE</p> <p>The Council will consider whether there are any legal impediments to the proposed use of Council land that are of such significance that consideration of the proposal ought not to continue. Where the land has been endowed to the Council for a specific purpose that is inconsistent with the proposed use, or where there is any limitation registered on the title to the land that is inconsistent with the application, the Council may refuse the application at this stage.</p>	<p>Where an application is wholly inappropriate for the Council land proposed, the Council is able to point out that fact to the applicant and refuse the application at this stage.</p>
<p>DECISION: ARE THERE BETTER ALTERNATIVES?</p> <p>After receiving suitable information on necessary alternatives the Council will determine whether there are other more appropriate options other than using Council land for the proposal. Considerations will include:</p> <ul style="list-style-type: none"> • Whether inability to use Council land will cause significant hardship to the Applicant; • Whether it is practically possible to use private land for the proposal. <p>If the Council decides that there are practical alternatives to the use of Council land available then the application will be referred back to the applicant for those options to be pursued further.</p>	<p>If the land in question is currently used by the public such as a recreation area or as a walking track, then Council will look at the appropriateness of the use and if there are alternative locations for the current or proposed uses.</p>

STEP THREE: WHO HAS BEEN CONSULTED?

<p>COUNCIL'S GENERAL POSITION</p>	<p>Explanation/Notes</p>
<p>CONSULTATION UNDERTAKEN</p> <p>The onus is on the Applicant to show to the Council that they have consulted with all the groups that might be affected in some real way by the proposal. Not only the fact of consultation should be disclosed, but also the views of the groups consulted.</p>	<p>Before making the application the Applicant should have spoken to the people it thinks would be affected by the proposal. It should record their opinions and present those to the Council with its application.</p>

<p>DECISION: SUITABLE CONSULTATION?</p> <p>The Council will then make a determination whether any other person, group or organisation should properly be notified and consulted. An application may be referred back for further consultation if:</p> <ul style="list-style-type: none"> • The applicant has failed to consult with groups that in the Council's opinion will be affected in a material way by the proposal being granted; or • A consulted party's opinion on the proposal has not been suitably communicated to the Council. <p>The Council may choose to undertake the further consultation itself rather than refer the applicant back to undertake further consultation.</p>	<p>Because the Council has the obligation to consider all the people that will be affected in some real way by the application, the Council will first see whether all the necessary people have been approached.</p> <p>If they have, it will then see whether their views have been recorded. If some deficiency exists in either respect, the application may be referred back for further or better consultation.</p>
--	---

STEP FOUR: CONSIDERATION

COUNCIL'S GENERAL POSITION	Explanation/Notes
<p>CONSIDERATION 1: COUNCIL'S INTENDED USE</p> <p>The Council's need for and the purpose of Council land will take priority over any proposed private use.</p>	<p>When considering an application Council will look at whether or not it still requires the land.</p> <p>Sale and exchanging of land are not covered in this policy as they are covered by separate statutory requirements and Council policies/processes. If Council pursues either of these courses of action it must follow specific legal procedures to do so. This may mean that the land is not able to be purchased or used by the applicant.</p>
<p>CONSIDERATION 2: APPLICANT'S PROPOSED USE</p> <p>Some of the issues that may be considered when looking at the proposed use of Council land by the applicant are:</p> <ul style="list-style-type: none"> • Whether it is desirable for the general public to (still) have access to the land; • The intended length of the use; • Consistency with Council asset management planning requirements; • Likely impacts including any significant amenity impacts; and • Long-term benefits and disadvantages to the city and community (e.g. 	<p>As a landowner, Council has an obligation to ensure that the proposed use of the land is consistent with how Council wishes the land to be used.</p> <p>It should be noted that this approval is separate and notwithstanding any other approvals that need to be gained for any other legislative requirements such as Resource Consents and Building Consents.</p> <p>The permitted use will be specified in any</p>

<p>environmental, social, economic and cultural benefits).</p> <p>This list is not exhaustive. The person(s) delegated the decision making power may take into account other factors considered relevant to the application received.</p>	<p>licence or lease issued.</p>
<p>CONSIDERATION 3: LEGISLATIVE REQUIREMENTS</p> <p>Any approval to use Council land is given by Council acting in its role as a landowner only, and will be subject to the applicant meeting all relevant legislative requirements.</p> <p>The applicant will be responsible for identifying and meeting these requirements, as well as meeting all costs associated with them.</p>	<p>Depending on the proposed use of the land, and the type of land involved, this may include (but is not limited to) requirements relating to:</p> <ul style="list-style-type: none"> • The Reserves Act 1977 • The Resource Management Act 1991 • The Public Works Act 1981 • The Local Government Act 1974; and • The Local Government Act 2002. <p>As part of the Application For Use process, officers will endeavour to assist applicants to identify potential legislative requirements, however ultimately the applicant is responsible for identifying and meeting any legislative requirements.</p>
<p>CONSIDERATION 4: SAFETY/NUISANCE AND COUNCIL LIABILITY</p> <p>The applicant must satisfy the Council that any safety, nuisance or other liability issues have been identified and managed appropriately.</p>	<p>Council cannot or will not approve private use of Council land for illegal or unsafe activities. Council will also consider the effects on adjoining landowners and concurrent users of the land in assessing its concerns about risks arising from the proposed use of the land. Council may require the applicant to indemnify the Council as a condition of granting its consent to use the land.</p>
<p>OTHER CONSIDERATIONS</p> <p>The Council may consider any other factor that may, in its view, be of relevance to the application and may disregard any of the above considerations if, in its view it is not of relevance to the application.</p>	

7 PROCESS

The process for applying and having a request considered is set out in the diagram in Appendix A.

Applicants are required to complete the application form for Private Use of HCC land. The application must describe the proposed use and include a plan prepared by a suitably qualified person showing clearly the following:

- a) Legal boundaries and legal description of the area, together with any adjoining properties that may be affected;
- b) The position of services (if any), both on under or above the road and the site. This includes sewer, storm water, water supply, gas, electricity, and telecommunication services²;
- c) The position of adjacent buildings (if any); and
- d) Topography – including key levels, contours, embankments, trees, road carriageway, footpath, kerbs, berms and any other physical features.

The application should address applicable considerations identified in this policy. Applicants' attention is drawn to Appendix B, which sets out other considerations applicable to Road, Drainage reserve and Reserve land respectively.

Applicants will be required to meet all costs associated with this application including an initial* application fee of \$150 plus GST for new applications or \$50 plus GST for existing applications that already have Land Owner consent. This application fee may be waived in special cases by Council officer's, for instance, if the private use of Council land will have a significant benefit to the Council.

The Application fee is to be charged in order to recover some of the cost to the Council involved in processing and assessing each application received.

* If the application assessment/processing time exceeds 8 hours an hourly rate of \$45 per hour will be charged. Council officers will advise the applicant if the time frame will be exceeded prior to proceeding further with the processing of the application. The additional application fee will be payable prior to advising the applicant of the Council's decision.

Application should include the following in addition to the foregoing:

- a) A description of what private property (if any) may potentially be suitable as a site for the proposed use;
- b) An explanation as to why Council property is being favoured over the use of private property;
- c) A list of the groups that have been consulted. In addition, an explanation as to why those groups have been consulted or, if no groups have been consulted, an explanation as to why, in your view, consultation is unnecessary; and
- d) Where consultation is undertaken, an explanation as to each group's position with respect to the proposal.

8 COSTS

Care of Land

Persons using Council land will need to accept responsibility and associated costs for maintaining the Council land in accordance with any legal requirements and to a reasonable standard, to the satisfaction of Council.

² Council land is often used by utility service providers and as such, before approving the use of land, the applicant will be required to produce letters of approval from (where applicable) the appropriate network operators

Annual Charges

In most cases, persons using Council land will be charged for use of the land. Council sets charges for leases and licences at a level that fairly reflects:

1. The benefit received by the private user;
2. Council's reasonable costs in administering the licence³ or lease; and/or
3. Local authority charges relating to the land.

An indication of these charges is given in the following table.

Type of Use	Charge Rate (Annual Rental)
Commercial/Industrial	Market rate*
Non Profit Organisations	As per Reserve Rental Formula**
Charities	Peppercorn
Use by an individual or group of individuals ("Individual") - exclusive use	Licence –flat rate***
	Lease –market rate
Individual Use –unlimited public access	Peppercorn

* All market rates are as assessed and negotiated by the Property Manager, based on independent valuation advice, or standard methods used by other authorities i.e. the Department of Conservation.

** Council adopted this in June 1994. Refer Appendix C for details of the formula.

*** The flat rate for individual(s) use will vary depending upon the nature of the use, however an indication of the rates will be shown each year in Council's Annual Plan.

³ Charges may vary depending on the type of agreement Council requires.

POLICY APPENDICES

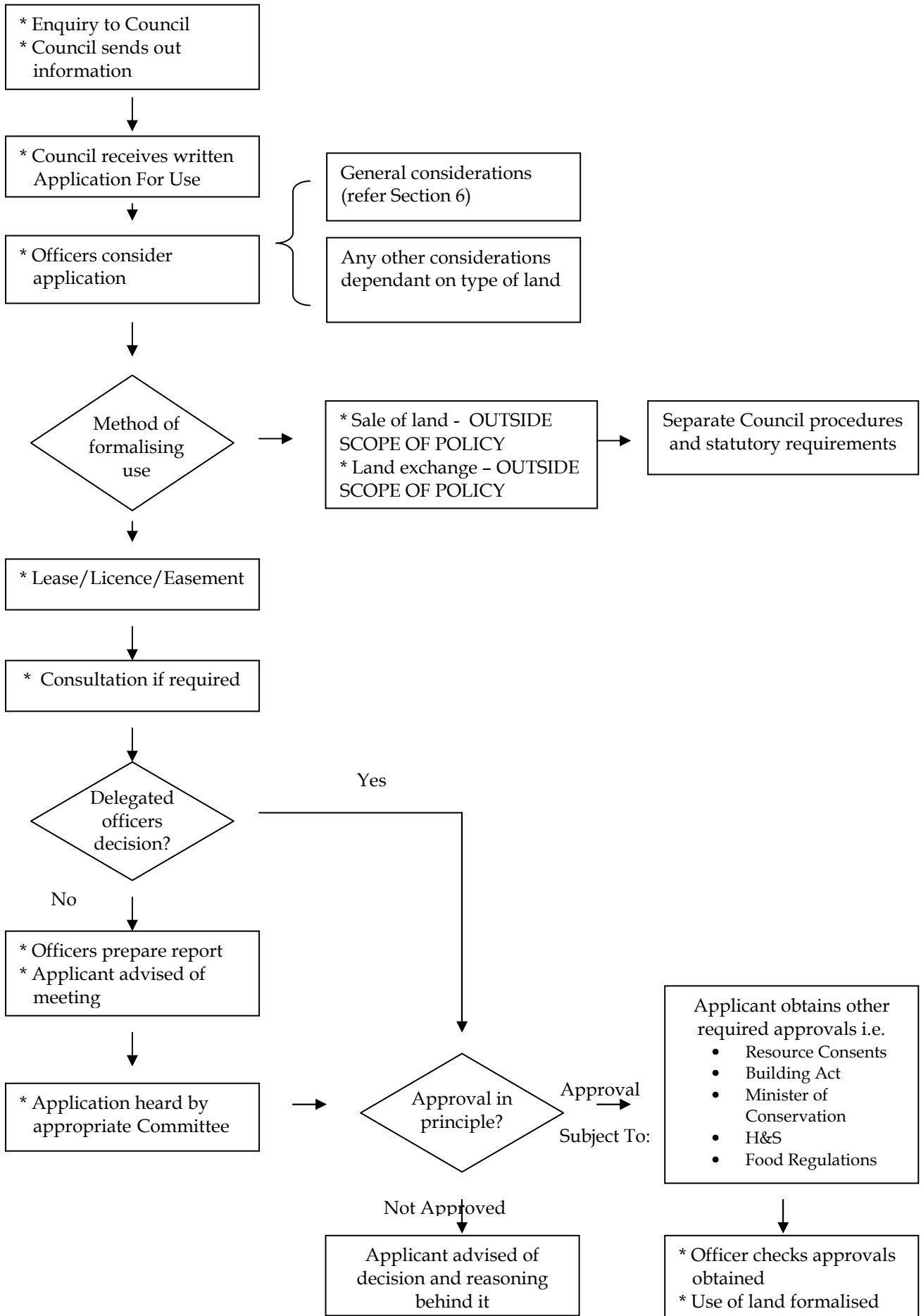
A) PROCESS FOR ADMINISTERING REQUESTS FOR USE OF COUNCIL LAND

B) OTHER CONSIDERATIONS:

- **Roads**
- **Drainage reserve**
- **Reserves**

C) RESERVES RENTAL CHARGE FORMULA

APPENDIX A - GENERAL PROCESS FOR ADMINISTERING A NEW REQUEST TO USE COUNCIL LAND



APPENDIX B - OTHER CONSIDERATIONS

The following are some guidelines towards the types of other considerations that Council may take into account when dealing with a private application to use Road, Drainage Reserve or Reserve land. Applicants are advised however that these considerations are not exhaustive and that all applications will be treated on a case-by-case basis.

• ROADS

Specific Principles For Roads

It is Council's position that:

- a) Roads are primarily to be used for movement of vehicles and people, but also may accommodate a variety of other public uses (e.g. utilities); and
- b) Private use of Road is only acceptable to Council where certain criteria are met, the Council is satisfied that the right to pass and re-pass is protected and there is no legal nuisance arising.

Specific Considerations For Roads

- a) Potential traffic/ safety implications – e.g. protrusions into the formed road or blocking of sightlines
- b) Neighbours' concerns
- c) Potential conflicts with utility operations, such as buried and overhead services
- d) Legislation applying to Road Land includes:
 - Local Government Act 1974; and
 - Resource Management Act 1991.
- e) Other specific documents related to the use of Roads include:
 - Proposed District Plan; and
 - Eastern Bays Design Guide.

• DRAINAGE RESERVES

Specific Principles For Drainage Reserve

Land held as Drainage reserve enables Council to have unrestricted access to the watercourses, drains and underground pipes for maintenance and renewal purposes, and also gives it the right to lay drainage services in the future.

Most applications for the private use of Drainage reserve relate to the extension of lawns and/or landscaping from private properties onto the Drainage reserve, vehicular access to properties and the erection of structures such as garages and overhanging decks.

It is Council's position that:

- a) It is important for Council to maintain unrestricted access to water services infrastructure. Drainage reserve is one mechanism by which this can be achieved.
- b) Drainage reserves covering open drains and watercourses should be free of encroachment and/or obstruction as they are important for stormwater drainage and flood control in the district.
- c) Private use of drainage reserve land that would significantly increase the loading on services in the drainage reserve or otherwise expose the services to increased risk of damage are undesirable.

- d) Private use of drainage reserve land that limits Council access to the land or services and/or limits the public from using the land is undesirable.
- e) Proposals for vehicular access along a significant distance of a drainage reserve are undesirable. Only proposals for localised vehicular access will be considered.
- f) It is desirable for Council to retain drainage reserve land if the land is used, or has potential to be used, as a public access way leading to a public amenity, for example footpath leading to a beach.
- g) If it is deemed unnecessary for Council to have ownership of the drainage reserves land which contain underground pipes, Council will consider the sale or exchange of land on the condition that an easement is drawn up over the land to enable Council to have access to the underground pipes for maintenance and renewal. For example, private properties adjoining drainage reserve land with underground pipes.

Specific Considerations For Drainage Reserve

- a) Care of Drainage reserve

Successful applicants will be required to carry out maintenance on the Drainage reserve and to properly maintain any existing fences. No additional trees will be permitted to be planted on Drainage reserve with underground water services, as tree roots could damage the water services.

Successful applicants will be required to ensure that access is available for Council to inspect its drainage assets.

- b) Other documents related to the use of Drainage reserve.

Although this policy stands alone for the purpose of guiding decisions on private use of Drainage reserve, there are other documents that may be referred to and followed in the process. These documents include:

- Hutt City Council Proposed District Plan
- Water Services Asset Management Plans

- **RESERVES**

The Leisure Services Division of Council is responsible for approximately 5300 hectares of land and 1340 individual properties. The bulk of this land is owned and managed by Council. However some properties are owned by the Crown and managed by Council, others are owned by Council but managed by the Wellington Regional Council.

Generally these properties have an ecological, landscape enhancement or recreational focus. Regardless of any Reserves Act status, Council uses the Act's objectives and processes to guide its management of Reserves.

The range of Reserves managed by Council is diverse and covers many environments, habitat types, recreational activities and community uses. These Reserves generally provide recreational, ecological, conservation, open space, community, educational and landscape benefits to the City.

Human and non-human populations enjoy the benefits of Reserves and the Reserves are managed to enhance the long-term capability of these sites. Reserves play a special role in the City's biodiversity. They contribute significantly to the character and attractiveness of the City.

Specific Principles For Reserves

With regard to Reserves, it is Council's position that:

- a) Reserve land is important for humans, terrestrial and aquatic creatures, invertebrates, birds and soil conservation;
- b) Individual properties managed as Reserve provide opportunities to benefit different populations;
- c) Generally Reserve land is precious and Council does not wish to see the City's Reserve estate decline in quantity or quality;
- d) Council's ability to use Reserve land for recreational, ecological, conservation, open space and landscape purposes brings benefit to the City; and
- e) Council encourages the use of Reserve land by communities, and recreational groups, especially where multiple uses of land and facilities can occur.

Process For Making Applications For Use Of Reserves

Where Council receives a proposal for private use of Reserve land, the general process outlined in Appendix A is followed.

However for Reserve there is usually a requirement for Council (in accordance with the Reserves Act 1977) to publicly notify its intention to consider the possibility of issuing a Licence, Lease or Easement to a private user and to invite submissions either supporting or opposing the proposal. If objections are received it will probably be necessary to hold a hearing on the applicant's proposal.

In addition to possible hearings, the application may also require consent from the Minister of Conservation. This Ministerial consent is required only where a Reserve Management Plan does not cover the Reserve in question and/or the Reserve Management Plan does not contemplate the issuing of a Lease or Licence that has been applied for.

Some applications may require a Resource Consent. This process is separate to the Reserves Act process. It is the applicant's responsibility to apply for a Resource Consent if needed, and to supply all information required. Any Lease or Licence applied for will only be issued subsequent to the issuing of Resource Consent where this is required.

Specific Considerations For Reserves

- a) Council's intended use

Where Reserve land is fulfilling a function that is consistent with the purposes and uses of Reserve land, such use will generally take priority over any proposed private use.

It is acceptable for Reserve land to be currently undeveloped, even if it is not generating obvious benefits now, so long as there is potential for the City to benefit from the land in the future. Council may take this future value into account in considering any application for private use.

- b) Applicant's proposed use

The proposed use must be consistent with the principles of Council's Reserve Management Plans, the Reserves Act 1977 and any other relevant Council policies.

Specifically, when dealing with land managed under the Reserves Act 1977, Council officers may consider the effects (e.g. recreational and ecological) that any loss of public access to the site may have.

c) Specific legislation applying to Reserves

Regardless of whether the Reserve has official status under the Reserves Act,⁴ Council will follow the process and principles in the Reserves Act 1977 in making decisions concerning private use of such land.

d) Current use

Council encourages the use of Reserve land by community and recreational groups, especially where multiple uses of land and facilities can occur. If such use is already occurring on the Reserve in question, and there is limited scope and/or capacity for additional uses then any further applications may be declined.

e) Consultation requirements

Under s119 of the Reserves Act 1977, public notification of the proposed use of the Reserve land may be required. There are some exceptions to this. Officers will advise applicants of the consultation requirements when they are preparing their application.

f) Care of Reserve land

The private user will be responsible for managing the land in accordance with any Licence or Lease document entered into by Council. Modifications to Reserve land or buildings, structures, natural or manmade facilities, trees and vegetation must be approved by the Asset Manager prior to changes taking place.

g) Other documents related to the use of Reserves

Other documents that may be referred to and followed in the process for considering applications for private use under this policy include:

- Hutt City Council District Plan;
- Hutt City Council Reserves Strategic Directions, May 2001;
- Hutt City Council Reserve Management Plans;
- Hutt City Council Walkways Review, 1997; and
- Any relevant Hutt City Council Asset Management Plans.

⁴ Some reserves land can also be “endowment” land and remain subject to sections 140 and 141 of the Local Government Act 2002 if the reserves classification is revoked.

APPENDIX C - RESERVE RENTAL CHARGE FORMULA

Non-profit organisations (such as recreational and sporting bodies) using Council land will be charged a rental based on the following formula.

1. For land with permanent buildings.

This is charged at \$4.00 for the first 100m² and the remainder at \$2.00 per m² up to 500m².

NB: For buildings in excess of 500m². The remainder over 500 is calculated at \$1.00 per m².

NB: An additional (1 metre) is added to the perimeter of the building to allow for steps, overhangs etc.

2. For land not used for buildings. This is calculated at \$20.84 per 1,000m².
3. A 50% rebate is given for unlicensed areas used for the principal purpose of the lessee.

EXAMPLE

Bowling Club (746m² for their building and enclosed land for greens 6,869m².)

<i>Building</i>	<i>100m² at \$4.00</i>	<i>=</i>	<i>\$400.00</i>
	<i>400m² at \$2.00</i>	<i>=</i>	<i>\$800.00</i>
	<i>246m² at \$1.00</i>	<i>=</i>	<i>\$246.00</i>
<i>Land</i>	<i>6869m² \$20.84 per 1,000m²</i>	<i>=</i>	<i>\$143.15</i>
	<i>Total</i>		<i>\$1,589.15</i>

These formulas will become effective on 1 July 1994 until further notice.

(All figures are exclusive of GST)

APPENDIX 3

Private Uses that will Be approved by Officers, and Council Committees.

Major Uses <i>(Political Decision)</i>	Minor Uses <i>(Officer Delegation)</i>
Any significant commercial/industrial activity All applications for use of land Managed as Reserve under the Reserves Act 1977, excluding gardens, lawns and grazing Any use involving dangerous goods in areas where it is not a permitted use in the proposed district plan Major structures & uses Bridges Easements Any exclusive use lease or licence for a period greater than 5 years	Garages Parking areas, carports, pads Gardens, garden sheds and garden structures Lawns Grazing land Cable cars Driveways and access ways Canopies and building overhangs Café dining Verandas, balconies, decks Underground tanks Signs and fences Footpaths Utilities Renewal of existing leases and licences Vendor licences Any other minor structures

If there is ambiguity as to whether an encroachment is major or minor, the encroachment will be treated as major.

That an officer acting under delegated authority, if considered appropriate and with due sensitivity, could refer the matter to the Chairperson of the relevant Community Board or Ward Committee for comment.