

ENCROACHMENT AND DISPOSAL POLICY ON RESERVES

Division	Parks and Gardens		
Date Created	August 2008		
Publication Date	August 2008		
Review Period	August 2012		
Owner	Reserves Asset Manager		
Approved By	Reserves Asset Manager		
Document Identifier	PG-POL-008-Encroachment and disposal Policy on Reserves		
Version	Author	Date	Description
V 1.0	Craig Cottrill	18/08/08	A brief description of the document changes

1. ENCROACHMENT AND DISPOSAL POLICY ON RESERVES

This policy covers all land owned or managed as reserve by the Hutt City Council. The policy details the Hutt City Council's procedures in all cases where private use of reserve land is proposed through easement, right of way, lease, sale or any other legal mechanism.

Council will only consider private encroachments on reserve land, or the disposal of reserve land, in the following situations:

1. Where an exchange is proposed and the land offered is of higher value than the interest in the reserve land wanted and there is a consequent increase in the "value" of the reserve estate; and/or
2. Where the reserve area is assessed by Council to be of no value as part of the reserve estate of the City in either the short or long term then its fiscal value may be realised. Funds generated through this must be invested in the purchase of land for reserve purposes that does fulfil community needs or demands; and/or
3. Where an easement or right of way meets the criteria of not needing public notification under section 48(3) of the Reserves Act 1977. This section allows non notification where:
 - a. "The reserve is vested in an administering body and is not likely to be materially altered or permanently damaged; and
 - b. The rights of the public in respect of the reserve are not likely to be permanently affected by the establishment and lawful exercise of the right of way or other easement".

Where Council receives a request for a private encroachment on, or an easement over reserve land, the following process shall be followed:

1. Upon receipt of any request or application, there will be an invitation to the applicant to discuss the issue. The applicant will be provided with copies of any relevant policies or guidelines and informed in writing of the officers' professional judgement of the application, a summary of the processes that will be followed if they wish to proceed, and a summary of likely costs.
2. Should the applicant wish to proceed, a report will be provided to the Community Services Committee and Community Board where relevant. The local residents' association and any local environmental group will be forwarded a draft of the report so their comments can be included in the final report. They will be informed of the opportunity to make public comment.
3. Should Council wish to support the application, a public notice shall be placed in the Hutt News, meeting the requirements of Section 119 of the Reserves Act 1977. This notice shall provide full details of the proposal and shall inform any interested parties that the reports are available from Divisional offices, the Customer Service Centre and the Service Centres closest to the site in question.

Where resource consent will be necessary for the proposed encroachment, the applicant will be required to apply for and gain any and all necessary consents prior to Reserves Act requirements being finalised.

4. If there are no submissions objecting to the proposal, Council's resolution will be forwarded to the Minister of Conservation for approval. Should there be any submission in opposition, all submissions will be heard by Council's Environment Committee which will recommend an outcome to the Minister.
5. The ultimate decision on whether any application will be allowed lies with the Minister. Should the Minister decline Council's request, it will be the responsibility of the applicant to meet any appeal costs.
6. All costs of the encroachment will be met by the applicant. This would include all legal fees, professional fees, surveying, public notices etc. It would also include the cost of officers' time. Should the application succeed, a payment fixed by an independent valuer working to terms of reference set by Council, shall be made to compensate the public estate. This payment would be paid into Council's Reserve Purchase and Development Fund. Because the former costs have to be met irrespective of success, the liability on the applicant will be irrespective of final success or approval.

2. DEFINITIONS

- In all cases above the term "encroachment: includes an easement or right of way.
- This policy covers all reserve areas administered by the Hutt City Council other than road reserves as there is a policy approved process for dealing with requests for encroachments in road reserve.
- This policy also covers all Council owned land that is administered as reserve but is not gazetted as a reserve under the Reserves Act 1977.