

Subject: Encroachment Policy

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Meeting Date: 10 June 2010

Report to OPERATIONS Committee for decision

SUMMARY

Within the Gisborne District Council land boundaries there are a number of encroachments by private landowners onto land administered by the Council. To enable the resolution of these encroachments, there is a need for a Council policy to be in place. This will ensure consistency and provide support to Council staff in the stance taken. It will also aid in ensuring a balance between resolving the issue in a way that will positively discourage encroachment but is not being seen as heavy handed by the public.

The objectives of the policy regarding encroachments on Council administered land are:

1. To promote a consistent policy of reducing and minimising encroachments on Council owned or managed land.
2. To establish criteria for assessing each existing encroachment with a view to regaining occupied land and, only where exceptional circumstances apply, restricting future use for private purposes with appropriate compensation to Council. (A definition of exceptional circumstances follows later in this document).
3. To establish a range of options for resolving each encroachment.
4. To progressively identify, document and address all encroachments on land administered by the Council.

RECOMMENDATIONS

That the Committee

1. receives the report
2. endorses the policy.
3. Recommends that Council
 - a) adopts the policy for implementation.

1. BACKGROUND

Council presently manages many types of land. Some is subject to the Reserves Act 1977 or other specific acts of legislation, or held in fee simple.

The Reserves Act and other acts of legislation provide guidelines and in many instances specific restrictions, responsibilities and management requirements.

A significant issue which faces Council is illegal encroachment and private use of Council land. These encroachments prevent use and enjoyment of the land by the public which is often the purpose of the lands.

Encroachments and private uses usually arise from the adjoining properties and vary from private accessways (permanent, semi permanent or casual) to building or other permanent structures, including walls, decks, garages, carports, patios, or just garden extensions with landscaping. In some instances the encroachments are substantial. These are all land related encroachments and uses but other types of encroachment can occur such as into airspace or light restriction.

2. DISCUSSION AND OPTIONS

A draft policy is attached as Appendix 1. The document outlines the issues and purposes of the policy. In particular, there is a need to:

1. Ensure that the public continues to have actual and perceived free access to areas of public land for its welfare and enjoyment.
2. Protect and preserve open space values in accordance with the Reserves Act 1977, reserve management plans and Council policies and strategies.
3. Discourage and prevent future encroachment or private use of land administered by the Council.
4. Provide a standard framework, including options and assessment criteria, for resolving existing encroachment and private use in a consistent and objective manner.
5. Initiate an implementation plan that progressively identifies, documents and resolves all illegal encroachments and private use on public land.

Resolution options can include:

- Licence to occupy or leasing with current market rent being charged.
- Removal of the encroachment.
- Charging of rates on encroached land for the period of the encroachment.
- Land exchange.
- Land disposal.

Generally all costs to resolve the encroachment/request are to be borne by the transgressor/ applicant.

There are two options:

Option A: Endorse the policy to ensure consistent handling of encroachments;

OR

Option B: Continue the current status quo and have no formal policy. This has previously allowed private occupation and use of public land, which when staff have tried to resolve

has meant lack of support and opposition, continually revisiting the issue costing in staff time and possible risk of legal and public outfall.

3. SIGNIFICANCE

Not applicable.

4. CONSULTATION

Relevant internal staff have been consulted with regards to the policy.

5. COMMUNITY OUTCOMES

Resolving encroachments will benefit the community by ensuring the public have use of public land.

6. LEVELS OF SERVICE

Does not result in change to level of service.

7. FINANCIAL

The \$Value for compliance and enforcement in relation to reactive cases is: estimated at .05 FTE and estimated cost \$5000 per annum. Revenue will be dependent on the resolution scenario taken.

8. LEGAL

Council has a statutory requirement to administer and manage reserve land consistent with its purpose under the Reserves Act 1977.

9. POLICY

Statutory actions will be as per the requirements of relevant legislation.

10. APPENDICES

Appendix 1 - Encroachment Policy and supporting documentation.