



Kaupapa Kōkuhunga Whenua Encroachment Policy

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Kaupapa Kōkūhunga Whenua | Encroachment Policy

KUPU ARATAKI | INTRODUCTION

Gisborne District Council (Council) owns and administers many types of land. Council land includes parks, reserves, formed and unformed legal roads, footpaths, stopbanks and more.

Encroachment on Council land may prevent use and enjoyment of the land by the public, which is often the purpose of the land.

Encroachments 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 garden extensions with landscaping. In some instances, the encroachments are substantial. Other types of encroachment can also occur such as into airspace or underground.

The Reserves Act 1977, Local Government Act 2002 and other legislation provide guidelines and, in many instances, specific restrictions, responsibilities and management requirements in relation to encroachments on Council land.

To enable the resolution of encroachments, it is important to have a policy in place. This ensures consistency and provides support to Council staff in the stance taken on resolution of encroachments. It also aids in ensuring a balance between resolving the issue in a way that positively discourages encroachment but is not perceived as heavy handed.

This policy was first adopted in 2010, and subsequently amended in 2012, 2015, and 2025.

ARONGA | PURPOSE

The purpose of this policy is to provide a clear process for reducing and minimising encroachments on Council land to protect and preserve open spaces and ensure continued public access to and enjoyment of the land. It is a tool to be used reactively as required and does not establish a proactive work programme to address encroachments.

The policy establishes criteria for assessing existing encroachments 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). It also establishes a range of options for resolving encroachments.

This policy is underpinned by Council's Te Tiriti Compass. Council acknowledges the history and impact of land ownership and alienation throughout Te Tairāwhiti. Responsible management of Council-owned land, including through this policy, contributes to achieving the long-term vision set out in Te Tiriti Compass.



TE RAHINGA | SCOPE

This policy applies to all unauthorised encroachments onto Council owned and administered land in Te Tairāwhiti, including parks, reserves, formed and unformed legal roads, footpaths, stopbanks, and all other types of land. Encroachments into the airspace above Council land and below-ground encroachments are covered.

The policy also applies to authorisation sought for new encroachments, unless covered by another Council policy (see below).

The policy does not apply to:

- uses of Council land permitted or agreed under another Council policy (e.g. Community Occupancy Policy, Flood Control Land Use Policy)
- legal utility works that are subject to statutory protection (national grid power transmission lines, motorways, military installations etc)
- disposal of land or road stopping.¹

NGĀ WHĀINGA | OBJECTIVES

The objectives of this policy are to:

- ensure that the public continues to have actual and perceived free access to areas of Council land for their welfare and enjoyment
- protect and preserve open space values in accordance with the Reserves Act 1977, reserve management plans and Council policies and strategies
- discourage and prevent future encroachment or private use of land administered by the Council
- provide a standard framework, including options and assessment criteria, for resolving existing encroachment and private use in a consistent and objective manner.

NGĀ MĀTĀPONO | PRINCIPLES

In considering encroachments and private use of Council land issues, Council will apply the following principles:

- Public access: The public should continue to have actual and perceived free access to areas of Council land for their welfare and enjoyment.

¹ Covered by the Property Sale and Acquisition Policy (or its replacement) and the road stopping guidelines (once finalised and approved).



- Open space values: Open space values will be protected and preserved in accordance with the Reserves Act 1977, reserve management plans and Council policies and strategies.
- Te Tiriti o Waitangi: As set out in Te Tiriti Compass, Council is committed to developing effective and meaningful relationships with mana whenua and upholding Te Tiriti o Waitangi. Te Tiriti Compass provides an articles-based framework for Council to meet its responsibilities as a Tiriti partner. Te Tiriti Compass will be applied in all decision-making processes under this policy.
- Effective and responsible landownership: As a prudent landowner Council will rely on and employ the same rights and legal remedies as are available to private landowners to resolve encroachments and private uses (i.e. Court action, Trespass and Property Law legislation.) In the same way Council should be prepared to be bound by similar legislation and act as a good and responsible neighbour where it has lands adjacent to private property.
- Current protections apply: Any decision resolving an encroachment issue is subject to all currently applicable protections and procedures. This includes, but is not limited to, the hierarchy of statutory procedures and protections (reserves, historic places, antiquities, or resource management legislation) through to local authority protections (relevant Council strategies and bylaws).

HOROPAKI Ā-TURE Ā-KAUPAPA | LEGISLATIVE AND POLICY CONTEXT

This policy applies in addition to any statutory provisions that apply to encroachments, including:

- Reserves Act 1977
- Local Government Act 2002
- Local Government Act 1974
- Resource Management Act 1991
- Heritage New Zealand Pouhere Taonga Act 2014.



In addition to this policy, other Council policies, strategies, plans and bylaws that are also relevant to resolution of encroachments include, but are not limited to:

Plans	Policies	Strategies
Long Term Plan (including 2024-2027 Three Year Plan) Annual Plan Tairāwhiti Resource Management Plan Reserve management plans Asset management plans	Te Tiriti Compass Tairāwhiti Piritahi Policy Significance and Engagement Policy Community Occupancy Policy Flood Control Land Use Policy Unformed Legal Roads Policy (once adopted) Property Sale and Acquisition Policy (or its replacement) Risk Management Framework Revenue and Financing Policy	Community Facilities Strategy (includes Parks and Open Spaces Plan) Future Development Strategy
		Bylaws Reserves Bylaw Public Places Bylaw

HUIHUIINGA HUNGA WHAPĀNGA | STAKEHOLDER ENGAGEMENT

Stakeholder engagement in relation to decisions being made under this policy will be undertaken in accordance with the Significance and Engagement Policy and, as appropriate, the Tairāwhiti Piritahi Policy.

Council's framework for engagement with hapū and iwi (**Appendix 1**) will also be utilised. Council has existing relationships and agreements with hapū and iwi that must also be considered and adhered to in decision-making under this policy.

TŪTAKINGA TUKIPU | GENERAL APPROACH

Council will:

- seek to resolve illegal encroachments and private use on Council land by either removal (first preference) or formalising the encroachment as resources allow
- decline all future requests for private use of Council land for access or occupation unless such use is of benefit to the proper use and enjoyment of the land and there is justification under the exceptional circumstances part of this policy for allowing the request
- give consideration to the context of the land when considering the resolution options
- take into account the effect of the encroachment on members of the public



- deal with historical cases on a case-by-case basis to resolve the encroachment
- require encroachments to be recorded on LIMs.

Protecting open space values

Land held by Council is to be used and managed for the purpose it is held. Open space values are identified and protected under legislation, zoning, policies and strategies.

Open space values will likely be reduced or compromised where an encroachment or use:

- inhibits public access and or enjoyment (a building or fence or an extension of a garden plot or landscaping which although not fenced gives the appearance of being privately owned)
- impacts on land features (destruction of native vegetation, other trees or heritage or geological features)
- impacts on the amenity of the neighbourhood.

Lands subject to the Reserves Act are protected and classified for specific categories of use or environmental worth. Reducing or compromising those intended uses or values is a compromise to the open space values.

Consider the circumstances of each case

While Council's aim is to remove or legalise all encroachments and private uses, and restrict and discourage new requests, it acknowledges that resolution should take account of the circumstances of each case on its own merit considering:

- the impact of the private use on reducing open space values or reducing public perception of open space values
- the cost and practicalities of alternative(s) and whether it would be a significant financial burden on the owner if required to comply immediately (e.g. if the alternative would require some time to complete such as building a replacement structure)
- any possible benefits and opportunities to Council (e.g. botanical enhancements, improved public access, more useable or compatible land, financial return for non-usable land)
- the potential for any decision to set a precedent for existing or previously approved encroachments or uses, in particular any precedent likely to encourage encroachments.



HUIRAHI WHAKATAU RARU KŌHŪNGA WHENUA | PROCESS TO RESOLVE ENCROACHMENTS

Establish a timetable to resolve

As part of the resolution process a timetable will be established for resolution. The encroaching party shall generally be required to remove whatever item or structure encroaches or discontinue use either immediately, within 12 months, or within an agreed period of time specified by licence or documentation.

Establishing and enforcing a timetable represents Council's earnestness in resolving encroachments or private use. Removal of the encroachment will enable the land to once again be used and/or restored to a condition to be appreciated as public open space.

Encroaching party pays costs

Generally all costs to resolve the encroachment/request are to be borne by the encroaching party. However, the circumstances of each case will be considered.

Costs may include the following:

- Assessment costs – The actual and reasonable costs of Council assessing the application based on the staff time required.
- Removal costs – Removal of all encroaching features is the responsibility of the encroaching party. Should the encroaching party fail to comply within the time constraints the work shall be carried out by Council at the encroaching party's expense.
- Agreement costs – All costs including but not limited to survey, valuation, documentation (easement, licence, transfer), legal and administration costs (including staff time) shall be met by the encroaching party.
- Survey costs – Where boundaries are disputed by encroaching party, Council will instruct a surveyor to determine legal boundaries. Where the surveyor's findings support the Council's view that there is an encroachment, survey costs will generally be required to be paid by the encroaching party.

Consultation

Council may, at its discretion or as required by relevant legislation, Council's Significance and Engagement Policy, and any relationship agreements in place, consult with hapū / iwi on matters of interest or cultural significance and / or other parties potentially affected by an encroachment or private use.

Council will inform the encroaching party of its intention to consult with other parties. Unless otherwise agreed, Council will endeavour to complete consultation within 20 working days of the encroaching party being informed.



Council decision

Each encroachment will be considered on a case-by-case basis. The decision as to how an encroachment should be dealt with shall be made by the Chief Executive or officers delegated with that decision making power.

Staff will consider the options for resolution set out in this policy and make a recommendation to the Chief Executive or delegated officer.

Where the Chief Executive or delegated officer accepts a recommendation, but the authority of Council is required to give effect to the recommendation, that authority will be sought.

WHIRINGA WHAKAŪ | RESOLUTION OPTIONS

Options to resolve encroachments can include:

- Removal of the encroachment
- Allowing the encroachment to remain subject to a licence to occupy, lease, easement or other mechanism
- Land exchange or sale.

Council will seek long term resolution of illegal encroachments and private use of Council land. Council's preferred resolution is removal or cessation and reinstatement of the encroached or utilised land.

In exceptional circumstances and where such action is authorised by legislation Council may consider allowing the encroachment or use by leasing or licensing the land (with formal documentation) or land exchange or sale.

Allowing encroachment or private use to continue

If Council decides to allow the encroachment or private use to continue or be permitted, Council will negotiate the terms of occupation with each encroaching party (see the Agreements and Terms section of this policy).

Land exchange or sale

Not all Council land fulfils the needs or vision of the Council's reserves or open space strategies, or other Council requirements or directions. Where Council considers that removal of the encroachment or cessation of use would add little recreational or visual benefit to the reserve/open space portfolio, and/or public benefit may be enhanced by permanently resolving the existing or proposed private use, Council will consider land exchange.



Other land with comparable or increased reserve or open space values, or improved access to the balance of the Council lands or improvement to view corridors or the like could all be factors influencing an exchange proposal. Similarly, sale to enable acquisition of more suitable land from the same or other parties may be an influencing consideration.

Any land exchange or sale will be undertaken in accordance with Council's Property Sale and Acquisition Policy (or its replacement). If the land involved is a reserve the Reserves Act 1977 will apply and if it is a road either the Public Works Act 1981 (this Act may need to be considered in other cases as well) or Local Government Act 1974 will apply.

NGĀ ĀHUATANGA RUNGA NOA ATU | EXCEPTIONAL CIRCUMSTANCES

Exceptional circumstances when referred to in this document mean the following considerations:

Safety

Encroachments or private use should be permitted where the use is aligned to issues of safety. Instances could be retaining walls to prevent soil slumpage or slippage, fences as a safety barrier to differing land levels or steep drops, alternate or improved vehicle access where legal access presents traffic/pedestrian safety issues. In such cases the use will be viewed as being long term and the encroachment / use where possible recorded by an easement for fair market consideration or deed of covenant registered against the encroaching party's title for no annual fee.

Significant net public benefit

In some cases, enhancements such as tree planting, landscaping, and improvement of visual and physical access to Council land can benefit open space and recreation use and public enjoyment. Provided that it can be demonstrated that:

- Public access is maintained (i.e. not discouraged nor prevented); and
- The use and design of any improvements do not indicate private land ownership to other users of the Council land adjacent then Council may allow the encroachments or private use.

Historic circumstances

Council may allow encroachments for structures where in some older properties parts of houses were built across the boundary lines or right up to the boundary (light and air issues) so that removal of the encroachment would necessitate partial demolition of the house and / or significantly impair privacy and security of the occupants. Considerations will also be given to previous Council resolutions and/or records or approvals for use.



In each of the exceptional circumstances detailed above, consideration must also be given to Council's obligations and associated restrictions in legislation (such as the Reserves Act 1977), and liabilities and responsibilities under Rules of Estoppel where such would apply.

NGĀ KIRIMANGA ME NGĀ HERENGA | AGREEMENTS AND TERMS

All agreements made under this policy will be legally binding between Council and the encroaching party.

Agreements will be drafted by Council's legal advisors based on instructions from the asset manager for the Council land in question. Terms will be such that Council deems appropriate and commensurate with the nature of the encroachment, and to uphold objectives and principles of this policy.

If the land being encroached upon is a stopbank or other flood control land, agreements to allow the encroachment to continue will be made under the Flood Control Land Use Policy, not this policy.

The terms of agreements under this policy may relate to or include, but are not limited to, the following:

- The location, duration and extent of the encroachment
- Conditions to manage the effects of the encroachment
- Council inspections and regular monitoring and enforcement provisions
- Maintenance provisions
- Ongoing fees
- Termination provisions, including final inspections and reinstatement requirements

Council will determine the most suitable form of tenure under which to grant a particular use, in line with any applicable legislation. This may include but is not limited to leases, licences to occupy, or easements.

Ongoing fees for encroachments and private uses under a lease, licence or other arrangement will be calculated by Council staff and advised to the encroaching party as part of Council's decision on their application. Calculation of ongoing fees will be as set out in **Schedule 1**.

The Chief Executive or delegated decision-maker may decide to waive fees or charge a different amount based on recommendations from staff on the specific circumstances of an encroachment. Fees lower than the calculation in Schedule 1 may be charged on the basis of public good or hardship considerations. Higher fees may be charged if the Schedule 1 calculation does not result in a charge reflective of the additional value to the encroaching



party. The reason/s for any divergence from the Schedule 1 calculation will be documented in writing.

NGĀ KŌKUHUNGA TUARANGI | AIRSPACE ENCROACHMENTS

Council will consider new and existing airspace encroachments under this policy subject to the following criteria being met:

- urban design considerations
 - compatible scale, design, materials and colour
 - visual amenities and streetscape
- crime prevention considerations
- respect for heritage and other notable values of the building and neighbouring buildings
- respect for neighbouring residential amenities including privacy, overlooking, noise disturbance
- no demonstrable public harm caused.

This clause relates to the encroachment only and not any other consents that may be required, e.g. resource consent / building consent.

AROTAKENGA KAUPAPA | POLICY REVIEW

This policy will be reviewed every five years or as otherwise required. If the policy has not been reviewed, amended or replaced within five years it will continue to apply.

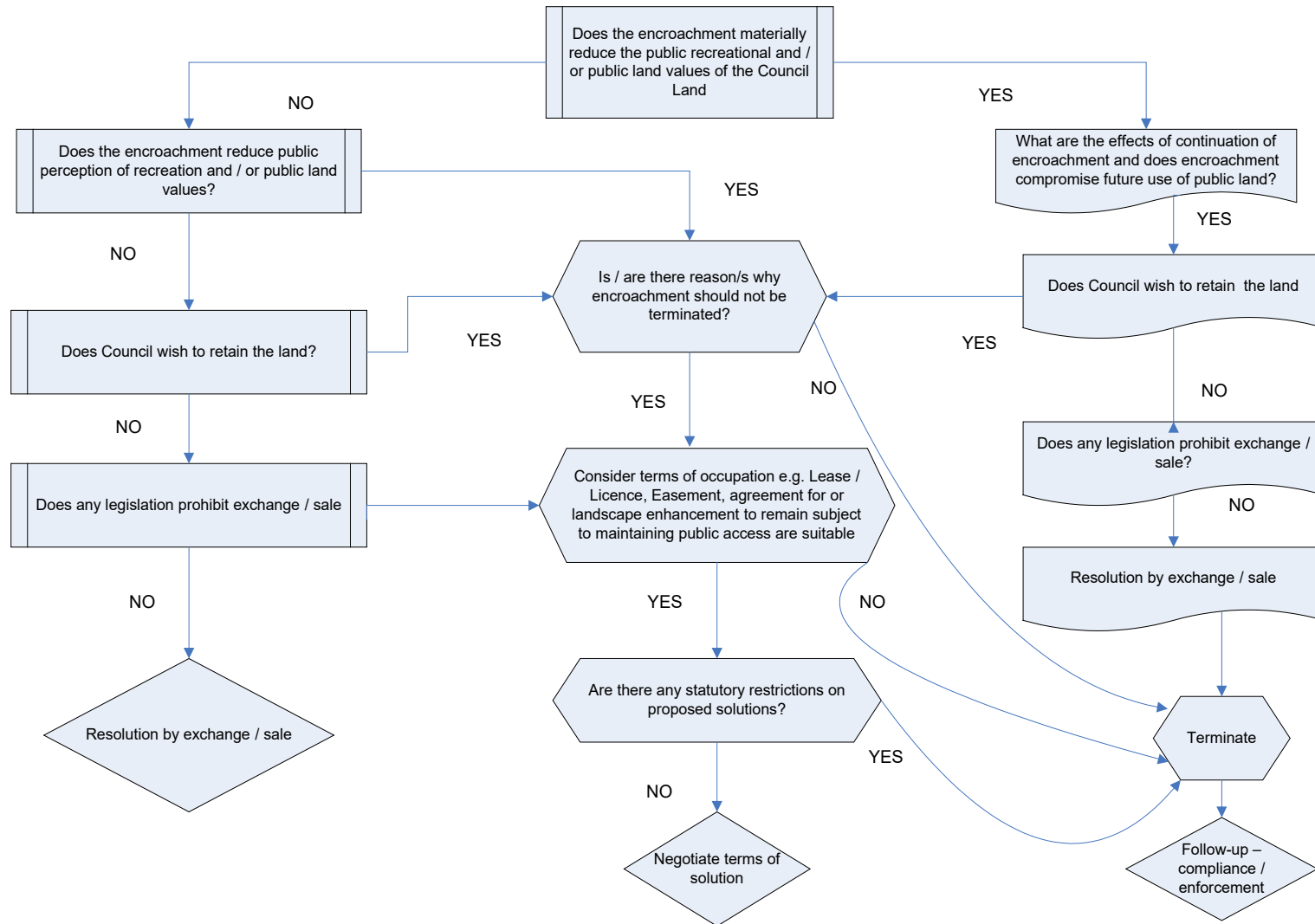


Appendix 1: Māori engagement priorities table

PRIORITY	HOW WE RECOGNISE EXTENT		ENGAGEMENT LOOKS LIKE	TE MATAPIHI FORM REQUIRED?	WHAT GOOD DECISION-MAKING LOOKS LIKE	REAL LIFE EXAMPLES
	THE EXTENT OF INPUT REQUIRED FROM MANA WHENUA TO MAKE A ROBUST DECISION	THE EXTENT MANA WHENUA INTERESTS WILL BE AFFECTED				
5	MAHITAHĪ: PARTNERSHIP	MANA WHENUA INTERESTS ARE CENTRAL & OTHER INTERESTS ARE MINIMAL	SUPPORT OR ASSIST	YES	MANA WHENUA LEAD DECISION MAKING AND RESPONSIBILITIES WITH COUNCIL IN SUPPORT	- LOCAL LEADERSHIP FORUM - TERMS OF REFERENCE - SETTLEMENT ENTITIES CONDITIONS - LEGISLATED ENTITIES CONDITIONS
4		MANA WHENUA INTERESTS ARE SIGNIFICANTLY AFFECTED WHILE OTHER INTERESTS EXIST	PARTNERSHIP	YES	MANA WHENUA AND COUNCIL FORMALLY WORK IN PARTNERSHIP TO MEET OR ACHIEVE MUTUAL INTERESTS.	- MANA WHAKAHONO Ā ROHE REQUIREMENTS - MOUs WORKING CONDITIONS - RELATIONSHIP AGREEMENT CONDITIONS
3	HUITAHI: COLLABORATE	MANA WHENUA INTERESTS EXIST BUT THERE ARE ALSO OTHER INTERESTS TO TAKE INTO ACCOUNT	COLLABORATE	YES	MANA WHENUA AND COUNCIL DISCUSS REASONABLE SOLUTIONS TO ENSURE INTERESTS ARE CONSIDERED IN THE FINAL OUTCOMES.	- MUST MEET RESOURCE CONSENT REQUIREMENTS - IWI MANAGEMENT PLAN CONDITIONS
2	WHAI KUPU: INFORM	SPECIFIC MANA WHENUA INTERESTS ARE AFFECTED	CONSULT	NO	MANA WHENUA FEEDBACK IS SOUGHT TO INFLUENCE DECISION MAKING HOWEVER COUNCIL MAKES THE FINAL DECISION AND IS RESPONSIBLE FOR ALL COSTS	GENERAL INFORMATION ABOUT UPGRADES THAT DO NOT REQUIRE RESOURCE CONSENT.
1		MANA WHENUA INTERESTS ARE LIMITED OR NOT AFFECTED IN ANY SPECIAL WAY	INFORM OR NOTIFY	NO	COUNCIL ADVISES MANA WHENUA ABOUT CALENDAR OF EVENTS, OPPORTUNITIES OR UPDATES OR GENERAL MAINTENANCE	THE GENERAL MAINTENANCE OF SERVICES THE COUNCIL IS RESPONSIBLE FOR DELIVERING TO THE GENERAL PUBLIC.



Appendix 2: Assessment of options for resolving encroachments on Council land





Schedule 1: Calculation of ongoing fees in encroachment agreements

Fees for all above-ground encroachments except airspace encroachments relating to CBD balconies

Annual fees will be calculated using a factor-based system as set out in the table below. All values include GST.

Base fee (Council cost to invoice is \$100)	Up to and including 20m ²	\$200
	Greater than 20m ²	\$700
Historic length of unauthorised occupancy	1-5 years	\$400
	5-10 years	\$200
	10 years or longer	\$200
Area of encroachment land as a total of private property	0-20%	\$200
	20-40%	\$300
	40-60%	\$500
	60% or more	\$700
Total annual fee		Base fee + length of occupancy + area of encroachment

Fees for airspace encroachments relating to CBD balconies

\$200 per annum plus GST.

Fees for below-ground encroachments

Minimum \$380 per annum plus GST (actual based on scale).



Te Kaunihera o Te Tairāwhiti
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