

Rentals for Encroachments on Council Land

1. Relevant legislation

- Local Government Act 1974
- Public Works Act 1981
- Reserves Act 1977
- Local Government Act 2002

2. Objective

To provide a framework for consistent decision-making in respect of the conditions under which Council will charge an annual rental for encroachments on unformed roads and reserves, where such occupation derives a significant private benefit for the occupier.

3. Definitions

For the purposes of this policy, the following definitions apply:

Road Has the same meaning as the Local Government 1974

Unformed road means a *road* that has not yet been formed but is held by Council for specific current and future purposes. This includes the verges of formed roads not required for roading purposes. It can be utilised for private purposes on terms set by Council, until such time as the land is required for its primary purpose, or Council deems it surplus and seeks to dispose of it.

Reserve means any land with reserve status pursuant to Reserves Act 1977 or any other relevant legislation

General land means general fee simple land owned by Council

4. General Approach

Council has significant land holdings, including *unformed roads* and *reserves*. Historically, leases and licences to occupy have been granted to enable the use of some of this land.

A number of *unformed roads* and *reserves* have (with or without lease/licence to occupy) been planted in higher value crops, such as kiwifruit, avocados and forestry. Council recognises that the use of this land is often generating a significant private benefit to the occupier, but in many cases no rental for its ongoing use is paid to Council on behalf of the wider community.

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This policy sets out the conditions under which Council will charge an annual rental for encroachments on *unformed roads* and *reserves*, where there is a significant private benefit to the occupier. Council may not charge a rental where there is limited private benefit to the occupier, and it is recognised that there are many instances where maintenance of *unformed roads* is undertaken by members of the adjacent property owner by grazing, gardening or mowing. In these instances, the cost of Council maintaining that land may be in excess of any income that land might generate.

5. Enabling use of Council land

Council may enter into leases or licences to occupy for encroachments on *reserves* in accordance with the requirements set out in the Reserves Act 1977, enabling occupation by the lease or licence holder for all or part of the *reserve*. Leases may also offer exclusive use of the land to which they apply.

Council may enter into licences to occupy on *unformed roads* in accordance with the Public Works Act 1981, on terms and conditions determined appropriate by Council. However, any licence granted cannot provide for exclusive use of the land by the licence holder, as Council has a duty under the Local Government Act 1974 to ensure that public access to the *road* is not obstructed. It should be noted that the obstruction of a *road* is an offence under s357 of the Local Government Act 1974. Council will not enter into any lease for *unformed roads* as this creates an exclusive interest in the land, which is at odds with Council's duties to ensure the right of public access is maintained.

For the avoidance of doubt, Council may enter into a lease for *general land* for market rate (or any other rate) at Council's sole discretion, like any other land owner.

6. Setting the rental

Council will set the rental payable for the use of the *unformed road* or *reserves* based on the use of the land (aligned to current market rates) and the area of the land used. Council will set the underlying market rate in its Fees and Charges on an annual basis, for the following land uses:

- Kiwifruit - green
- Kiwifruit - gold
- Avocados
- Forestry
- Dairy Grazing

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- Retail/commercial/industrial
- Other Grazing
- Other Horticulture
- Built structures such as swimming pools, sheds, houses.
- Other market rates for specific uses evaluated annually.

At its sole discretion, Council will apply discounts to that market rate in recognition of one or more the following considerations:

Criteria	Discount to market rate
Non-exclusive use	Up to \$1000 per hectare
Where the estimated value of maintenance carried out by adjoining owner/licensee exceeds the value of the lease/licence	Estimated value of maintenance (determined on case by case basis)
Where frontage land is utilised for beautification or environmental benefits (e.g. garden extensions into a reserve) and public access is not compromised	Full discount, as potential rental would be trivial amount not worth collecting
Any matter that may impact on the rental value of the land	As determined at Council's sole discretion, using a case by case approach

Where a rental is assessed to be \$250 or less per annum, Council will not charge any rental in recognition of the limited benefit being derived by the occupier and the administrative cost of entering into a rental agreement.

7. Other terms of lease or licence to occupy

All leases and licences to occupy for encroachments on *unformed roads* and *reserves* issued after this policy comes into effect will include the following terms as considered appropriate by Council:

- A clear requirement to retain public access where the licence provides for non-exclusive use of an *unformed road*;
- Lease/Licence holder responsibility include Health and Safety obligations and Zespri licence requirements;
- Requirement to move any improvements, which includes vegetation and/or structures at the end of the licence/lease period, unless agreed prior by Council;

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- Lease/Licence holders responsibility to inform Council of the need to transfer the licence/lease to any new owner of the occupier's own property;
- An ability to terminate the licence if Council wishes to use the *unformed road* or *reserve*, for any other public purpose, to be determined in Council's sole discretion or as provided for in any licence agreement; and
- All other standard commercial terms as determined appropriate by Council.

8. Fencing

For the avoidance of doubt, Council is required by the Fencing Act 1978 to pay 50 percent of the costs of fencing on land with *recreation reserve* status, unless exemption has been provided for by way of a consent notice being placed on the title of the adjoining land. Council has no obligation to fence *unformed roads* and *esplanade reserves vested under Section 239 of the RMA*.

9. Policy procedures

Where any existing encroachments exist and the person responsible for that encroachment refuses to enter into a new lease or licence to occupy under the terms of this policy, Council will require the removal of any structures or vegetation from the land within a specified time period. If not undertaken, Council can remove the encroachments or assume responsibility for them at its sole discretion. If provided for in an existing licence to occupy or lease, Council may require the person responsible for the encroachment to reimburse Council for the cost of removal.

In accordance with its obligations under the Reserves Act 1977, and only if required by the Act, Council will publicly notify its intention to enter into a lease or licence to occupy for land classified as a *recreation reserve*, and consider objections or submissions from any party received within the time period prescribed as part of that public notification. It is noted that there is no obligation to publicly notify the intention to enter into a lease or licence to occupy for *general land, local purpose reserves* or *unformed roads*.

In accordance with its obligations under the Reserves Act 1977, any revenue from leases and licences to occupy on land with reserve status will be used by Council for reserves purposes.

Council will negotiate the implementation of this policy in good faith. On a case by case basis, Council will provide for minimum guaranteed tenure within a lease or licence agreement, including provision for rebate on early termination (calculated on a pro-rata basis).

It should be noted that Council may (at its sole discretion) implement the rental charge in a staged manner over a period up to 3 years.

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Decisions under this policy will be delegated to staff in accordance with Council's delegations register.

This policy shall be reviewed within 5 years of coming into effect.

10. Associated Council policies and procedures

Fees and Charges (as set annually)

Reserve Management Plans

Group	Infrastructure Services	Contact (3rd Tier Manager)	Strategic Property Manager/Reserves and Facilities Manager
Supersedes	n/a		
Creation Date	1 August 2017	Resolution Reference	PP5.2.7
Last Review Date	n/a	Resolution Reference	n/a
Review Cycle	Within 5 years of coming into effect		Date 1 August 2022
Authorised by	Policy Committee		Date 31 July 2017