

13. PROPOSED POLICY FOR EASEMENTS COMPENSATION FOR EXISTING COUNCIL-OWNED PARKS AND RESERVES

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The purpose of this report is to recommend the adoption of a policy that provides for the charging of compensation when granting a right-of-way or other easement over park or reserve land that is owned by the Council at the time a request for an easement is made. The adoption of this policy will formalise the present practice of seeking a payment, based upon independent valuation by a registered valuer, when granting easement rights over Council-owned park and reserve land to third parties. This payment is additional to the legal and survey costs involved in creating the right-of-way or other easement, which are payable by the applicant. This report does not relate to easements being created as part of the subdivisions process over land which is to be vested in the Council as the subdivider's reserve contribution. A separate report is being prepared for the December Council meeting to address compensation for such easements.

BACKGROUND

Section 48 of the Reserves Act 1977 allows the Council, with the consent of the Minister of Conservation, to grant rights-of-way and other easements over reserve land.

Section 235 of the Local Government Act 1974 allows the Council to grant easements over any other land (such as parks held under the Local Government Act 1974) if the Council resolves that the proposed easements will not interfere with the proper use of the land, buildings or personal property.

REASONS FOR EASEMENT PAYMENT

Once an easement over any land has been granted, the holder of the right has a continuing interest in the land, until such time as both parties mutually agree to surrender the easement.

Over a period of time, the layout of parks change to meet changing community needs. This often requires alterations to be made to the park's design to ensure that all park users can operate harmoniously within the park environment. The granting of easements over parks can limit the ability of the Council to make these changes. Often, ideal planning solutions to provide for the public's needs are unable to be put in place because of cable easements, etc. An example of this is an 11KVA cable through South Hagley Park, which required a proposed changing shed to be moved to a less satisfactory position in the park, from a park planning perspective, to service rugby players' needs. There is a lost opportunity cost imposed by an easement over a park or reserve in favour of a third party for which the Council is justified in being compensated. Indeed, it is standard commercial practice for landowners to require a payment for easement rights either as a lump sum up front or on a regular basis.

Easements, depending on the rights granted, can also impinge upon the landscaping of a park, in that large trees must be planted some distance away from the easement.

THE PRESENT

The Resource Management Act 1991 requires all lots of a subdivision to have legal road frontage. It is expected that all utility services from the road to a particular property will be laid from the legal road frontage for the property. Applications are continually being made by third parties for a service easement, and to a lesser extent, rights-of-way over Council-owned park and reserve land to service private property, one of the reasons being that the applicants believe it is a less expensive way to service their property than bringing the required services through their legal road frontage. When considering the process necessary to grant an easement or right-of-way over park or reserve land to their property, and the total cost for doing so, which includes the compensation fee, property owners have more often found that they are better off to access the services from their legal road frontage.

Monies received from the payment of easement compensation are placed in the reserve contribution account, to be used for the development of reserves throughout the city.

Recommendation: That all rights-of-way and service easements granted pursuant to the provisions of the Reserves Act 1977 or the Local Government Act 1974 over existing park and reserve land be subject to the following conditions:

1. All rights-of-way and easements granted over park or reserve land to be registered against the title for the land.

2. All costs associated with the creation of the easement to be met by the applicant.
3. A compensation payment to be charged to the applicant as determined by independent valuation, for the privilege of obtaining an interest in the Council-owned park or reserve land.