

## Submission Attachment to WCC on Encroachments by Aaron Gilmore

My Name is Aaron Gilmore, I have 60sqm of encroachment on road reserve at Weka Bay for our family home garage and cable car. Our family is a significant land owner in WCC across multiple buildings and locations.

WCC according to its forecasts requires more operating funding and its own figures show debt levels reflect an average household having a 'WCC mortgage' of about \$227,000. The proposed small changes below assist in both of these and make the existing policy better. Encroachments are less than 1% of WCC revenues across around 7,000 homes or about 10% of households, disproportionately in the eastern suburbs. I withhold comment on the larger issue of the flaws in the remaining parts of the plan due to time restrictions.

This submission is therefore focused on two flawed aspects of the proposed WCC policy towards encroachments that can be made easily better, namely:

1. Flaws in particular from the current length of term of encroachments, I recommend three changes.
2. The flawed 2011 WCC policy towards implementation of sale of encroachment land pursuant to the Tenth Schedule of the Local Government Act 1974 (LGA), in particular the reference in Annex 2 of the WCC policy that "any person may object", I recommend two changes.

### 1. Flaws in the Current Encroachments

#### Discussion

WCC encroachment policy formally is a subset of WCC bylaws 2018 adopted on 30 May 2018, in particular governed by Part 5 Public Spaces and bylaw 19.1-19.6 and the associated supporting policy last updated September 2011.

This in turn essentially allows the WCC to charge fees and charges as they see fit and upon whatever terms and conditions deemed appropriate.

The WCC then allow encroachments to be issued that allow permanent above ground structures to be placed on the land, these in many cases costs hundreds of thousands of dollars (in my case closer to \$500,000). These can be revoked with WCC notice without seemingly any rights of appeal or compensation with one months notice and all structures have to be removed, which is in practice quite ridiculous. In my case such removal if forced would require a consent that would take the WCC at current times months to approve! The WCC is wanting to implement market value rentals on what is essentially a month by month lease. Perversely WCC puts in place long term leases for structures under the ground like pipes and wires.

As such if the WCC wants to move to a market value test, it must also implement other measures that normal market rentals apply, that is extending the effective notice period for encroachments to a reasonable period as well as the right for licence holders to be able to appeal any revoking as well as consider compensation for structures that the WCC can under current rules effectively seize assets like some communist dictator with one months notice. Equally in accounting terms, month by month leases are treated quite differently to long term leases and it would appear that the WCC may have some errors in this too. The proposed change alters this as well. Allowing WCC in theory an improved balance sheet position for other matters.

I am broadly supportive of the principle that land users should pay the market value of their use, as long as the other issues are resolved, as the issue of what is a fair land use rental in law and commerce is broadly established by Courts and in practice, but acknowledge that this will result in some not being able to pay due to fixed incomes and WCC needs to continue to allow a mechanism for that. However, strangely I note that for my encroachment if the proposed market value test was implemented my annual fee would go DOWN not up as my 60sqm is ~1% of the 5,900 sqm section (yes 5,900) that it is attached too. Three changes can be made to the Policy by WCC to make it significantly better.

#### Recommendations

I recommend that WCC implement for those encroachments with permanent structures that instead of a month by month licence that the policy is altered so that:

- a. these are converted into long term leases. With the rules and fees for such leases be fixed for the period of the lease. The term of the lease to be 20 years less one day to meet the requirements of the RMA, with a right of renewal.
- b. all encroachment licence holders be given the right to appeal or challenge any revoking of the lease if required for public works consistent with the requirements of the public works act.
- c. in the event of a revoking that WCC be required to compensate owners or be required to offer the land user the land at market value.

## 2. WCC Policy on Sale of Land under Encroachments

#### Discussion

At a recent public meeting in Hataitai it was raised by some Crs that it is not the WCC that is at fault here but Govt. That is incorrect. Many if not all of the encroachment holders I have spoken too (dozens) would if they could purchase the small bits of land that they use with structures upon them. The WCC process that implements this that is trying to follow the LGA is overly restrictive and frankly bureaucratic nonsense. The LGA does not require that "any person" may object. That is a WCC construct. The policy should instead align with other similar laws and refer instead to any 'affected person' to stop frivolous claims. Equally of the current approximate 7,000 encroachment licenses WCC has issued. The cost to carry out any purchase typically exceeds the value of the land! As such WCC should undertake a more general city wide review of surplus road reserve land, that it could then do a city wide sale process conversion to long term leases as above would achieve many of the typical rights of ownership anyway.

Back of the envelope calculation is that if half of the current encroachments are land based with structures upon them and would earn WCC \$2 m p.a. sale of these would probably yield \$100 m+ and if an excellent official was employed for \$200,000 for a year along with a surveyor this would probably achieve much and appear to be a good ratepayer investment, make residents happy, offset proposed rates rises and significantly reduce the admin costs from doing each one individually as it would be shared.

#### Recommendations

I recommend that:

- a. WCC amend the policy of sale to remove the reference to 'any person' objecting to instead be 'any affected person'
- b. WCC agree to undertake a city wide review of surplus road reserve land with a view towards offering for sale at market value to those with permanent structures upon them

Regards,

Aaron Gilmore

Weka Bay