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# Vesting of Roads and Reserves Policy

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Adopted by Full Council 28 July 2016

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### 1. Policy Statement and Purpose

- 1.1. This policy applies to all transfers of land into the Council's ownership as road or reserve.
- 1.2. The purpose of this policy is to minimise prejudice to the Council from the transfer of land to the Council by establishing guidelines for assessing requests to transfer land to the Council, in particular requests for land to be transferred subject to existing interests.

### 2. Issue

- 2.1. The Council receives requests from resource consent applicants that:
  - a. land to be vested as road is transferred to the Council by way of dedication rather than vesting; and/or
  - b. the Council sign a section 239(2) certificate in relation to vesting of land as reserve in the Council.
- 2.2. If such requests are accepted by the Council, the land transferred to the Council (either as road or reserve) remains subject to existing interests registered on the land. This is an effective solution from an applicant's perspective because:
  - a. it does not require the applicant to obtain consents from all registered proprietors with an interest in the land; and
  - b. it allows the land to be transferred to the Council subject to the interests registered against it without the applicant having to address issues associated with such interests continuing to apply to the road or reserve.
- 2.3. However, from the Council's perspective accepting land (either for road or reserve) subject to existing interests may be prejudicial depending on the nature of those interests, their legal repercussions, and the extent to which the Council is bound by them.

### **3. Land Subject to interests**

- 3.1. All land transferred to the Council (whether as road or reserve) should vest in the Council free from all existing interests. Any such interests are to be removed by the applicant (and all relevant consent obtained), at their cost, and prior to the vesting of the land.
- 3.2. The Council in its sole discretion may accept land to vest subject to existing interests only in special circumstances. Special circumstances are likely to involve situations where there are a large number of different registered proprietors (e.g. 50+) with an interest in the land whose consent must be obtained, or where such registered proprietors have been demonstrably uncooperative despite the applicant using its best endeavours to obtain that consent. In these circumstances, the applicant must be able to demonstrate to the satisfaction of the Council that it is not feasible for it to obtain the requisite consents.
- 3.3. In determining whether to accept land (whether as road or reserve) subject to existing interests the Council will take into account the following factors:
  - a. Whether the land is suitable to vest in the Council;
  - b. Whether vesting this land in the Council is for the “public good”;
  - c. In relation to land to vest as road, whether the road meets all Council and statutory standards applying to roads;
  - d. In relation to land to vest as road or reserve, whether or not the existing interests in the land will prejudice the use of the land as a road or reserve;
  - e. In relation to land to vest as reserve, whether or not the existing interests in the land will compromise the Council’s ability to fully comply with the provisions of the Reserves Act 1977 or other applicable statutes or regulations;
  - f. An explanation from the applicant of what interests have been removed;
  - g. The reasons why the land cannot be vested in the Council free from all existing interests;
  - h. The nature of the outstanding interests that remain on the land;
  - i. An explanation from the applicant of what they have done to try and remove these interests, why certain interests could not be removed and whether the applicant has taken all practicable steps to remove the interests;
  - j. An explanation from the applicant why the remaining interests in the land will not prejudice the Council;
  - k. A legal opinion from the Council’s external counsel regarding the risk to the Council in accepting the land subject to existing interests; and
  - l. Any other factors that the Council, in its complete discretion, deem relevant.

#### **High Risk Interests**

- 3.4. The Council will not accept land subject to any of the following interests:
  - a. No Complaints Covenants
  - b. Appointment of Grantee as Power of Attorney for the Council
  - c. Encumbrance Requiring Membership in Residents Society

#### **Medium Risk Interests**

- 3.5. Provided that the Council has confirmed that special circumstances exist, and after taking into account the factors in paragraph 3.3, the Council may accept land subject to the following interests in its sole discretion:
  - a. Private water easements:

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- (i) **Roads:** In relation to land to be dedicated as road the Council requires confirmation that the location of services is acceptable in the road reserve (i.e. not necessarily in the middle of the road) and whether there is a body corporate/society set up for a single point of contact, i.e. not dozens of separate lot owners.
  - (ii) **Reserves:** In relation to land to be vested as reserve, any easements that are not consistent with the use of the land under its reserve classification and/or might interfere with the use of the land by the public or otherwise will not be accepted. Refer to Section 48 of the Reserves Act 1977 for guidance.
- b. Utility Service Easements in Favour of Utility Operators:
- (i) **Roads:** It should not be difficult for the applicant to obtain the consent to surrender such easements as they should be dealing only with one party. Furthermore the utility operators should be amenable to surrendering such easements as they will be able to rely on their statutory right to construct works on legal roads in any event.
  - (ii) **Reserves:** The position is as per 3.5(a)(ii) above.
- c. Right of way easements:
- (i) **Roads:** If these are on standard implied terms then they are unlikely to adversely affect the use of the road and accordingly are of low risk to the Council. However, if the easement contains non-standard terms that interfere with normal road usage (e.g. a right to park) then the risk to the Council will be higher. Right of way easements have therefore been placed in the medium risk category.
  - (ii) **Reserves:** The position is as per 3.5(a)(ii) above.
- d. Building Control Covenants:
- (i) **Roads:** If these are unlikely to adversely affect the construction of the road then they may be of low risk to the Council.
  - (ii) **Reserves:** The Council should not accept this interest if the covenant places any restriction on the use of re-locatable buildings, fencing requirements or restrictions, limits on uses, signage prohibitions and any similar matters.

Due to Building Control Covenants being significant with reserves, but less so for roads, they have been placed in the Medium Risk Category

### **Low Risk Interests**

3.6. The Council will likely accept land subject to the following interests subject to confirmation that the risks are acceptable. Refusal to accept land subject to these interests is in the Council's sole discretion:

- a. Appurtenant Easements:
  - (i) These are of minimal risk to the Council as they will simply benefit the land.
- b. Interests which expressly do not apply:
  - (i) Any interest that expressly provides that it does not apply to land vested in the Council as road and/or reserve is of minimal risk to the Council provided that the instrument has been correctly drafted and there is no risk that the interest will apply to the land and/or bind the Council.

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- c. Interests that the Council is a party to:
- (i) If the Council is a party to an instrument then it should be removed with the applicant meeting any costs incurred by the Council in removing the interest.

#### **Other Encumbrances or Interests**

- 3.7. These should be assessed by the Council on an instrument by instrument basis taking into account all relevant factors including (but without limitation):
- a. In relation to roads, the impact of the instrument on normal road usage;
  - b. In relation to reserves, the impact of the instrument on the use of land as a reserve;
  - c. In relation to reserves, the impact of the instrument on the Council's obligation as administering body under the Reserves Act 1977;
  - d. Any restriction on the Council's ability to make decisions;
  - e. Any liability incurred by the Council as owner of the land;
  - f. Any obligations (positive or negative) that the Council is required to comply with.

#### **4. Costs**

- 4.1. This policy establishes a user pays regime for the transfer of land to Council ownership. Charges will be in accordance with the fee schedule agreed by the council from time to time.
- 4.2. An applicant who is requesting that the Council accept land subject to existing interests must:
- a. provide information referred to in 3.3(f), (g), (h), (i) and (j) above to the Council;
  - b. pay an advance payment of an amount specified by the Council from which the Council's costs ("Costs") relating to the request to vest land in Council subject to existing interests, will be deducted. Costs include the cost of obtaining the advice contemplated in clause 3.3(k) above, all Council staff time, research costs, legal costs and all professional fees or any other expenses incurred by the Council associated with the request for the Council to accept land subject to existing interests. If the Costs are less than the pre-paid amount then the remaining sum shall be returned to the applicant; and
  - c. provide a solicitor's undertaking to pay the Council's reasonable costs (to the extent they are not already covered by the advance payment) which the applicant agrees to pay to the Council promptly upon being invoiced by the Council
- 4.3. The advance payment is to be paid at the time of the request for the Council to accept land subject to existing interests and prior to the Council commencing any work or incurring any costs relating to the request.

#### **5. Timing**

- 5.1. In order to ensure the most efficient resource consent process, where an applicant is seeking to vest land in Council, it is recommended that the Applicant take all necessary steps to remove any interests from land intended for vesting prior to making an application under the RMA.

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- 5.2. Any application for the Council to accept land subject to existing interests is required to undergo consultation with Council prior to an application for an outline development plan, a plan change, a resource or subdivision consent being lodged. It is the responsibility of the applicant to ensure that all issues relating to the vesting of land in Council are resolved prior to lodgement of an application.
- 5.3. A decision of whether the Council will accept land should be made prior to lodgement of a consent application.

## **6. Contacts**

- 6.1. Council's Subdivision Planner or Council's Duty Planner – 03 441 0499.