

EASEMENT POLICY

Adopted - Finance and Corporate Accountability Committee 12 August 2008

QUEENSTOWN LAKES DISTRICT COUNCIL

2008

Queenstown Lakes District Council

Easement Policy 2008

This document records the decisions made at its meeting of 12 August 2008

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Easement Policy Recommendations Summary

- This policy refers to easements placed through Council freehold or administered property, this policy excludes easements within Road Reserve.
- All applications to place easements through Council freehold or administered property are to be made in writing to APL PROPERTY for review, including Councils own easements. If applicable applications for underground services will be presented to the Property Sub Committee for review, applications for Right of Way Easements will be presented to the Community Services Committee.
- The applicants will pay an application fee of \$600 + GST to APL PROPERTY for underground services and \$1,320 + GST for Right of Way Easements.
- Council's own services through Council land will not be charged fees. These applications will need to be forwarded to APL PROPERTY for processing and consultation.
- Processing costs, for example DOC approval fees, advertising and legal fees, will be incurred by the applicant.
- The easement construction area must be maintained by the applicant and their contractors in a safe and tidy condition at all times
- All costs associated with the survey and registration of the easement on the Councils title be paid for by the applicant
- The applicant is to provide APL PROPERTY on behalf of Council within 3 months a surveyed easement plan on which the new easement is shown
- The applicant is to provide APL PROPERTY on behalf of Council within 3 months of completion of work a copy of the title on which the easement is shown. This title will be forwarded to the Council's GIS team.
- Fees, Right of Way, Commercial/Industrial and complex easement applications will incur a charge determined by individual valuation. Underground service applications will be charged at 30% of land value, land value will be obtained from current rating valuation.
- The applicant will pay a \$1,000 - \$5,000 bond to the Council via APL PROPERTY and sign a temporary access licence before any construction work commences on site. The bond will be fully refunded subject to reinstatement of the property to Councils standards and satisfaction, including QLDC Turf Reinstatement Specifications January 2007.

- Easement documentation will be prepared by the applicant's solicitors or by Councils solicitors at the applicants cost. All documentation must be forwarded to APL PROPERTY for review.
- Maintenance and/or upgrade of easement – access must be obtained via a temporary access licence. This can be applied for at APL PROPERTY, a bond may be required

Definitions

Council – Queenstown Lakes District Council, a Body Corporate under the Local Government Act 1974 (hereinafter called “the Council”)

Easement – A right which a person has to use land belonging to another in a particular manner without the right of possession of the land, or to take any part of the soil or its produces, or to prevent a landowner from using their land in a particular way. A common form of easement is the right of access over another’s property.

Property – Fee Simple land, which Council owns or land vested in Councils administration, this excludes Road Reserve

Reserve – Land set apart for any public purpose

Right of Way – Right of passage over the land of another

Subdivision – block of land divided into smaller lots

Valuation – estimate of worth

Underground Service – pipes/conduit laid underground for example, Telecommunications, Electricity, Stormwater, Sewage, Water, Gas

1.0 Introduction

Council own and administer a number of properties. These properties are held in trust for the general public to provide a wide range of benefits to the community currently and for future generations. Use of reserves and council property is not discouraged, if the use is on a temporary basis or does not distract from the intended use of the property or future use for the property.

Council has the authority under the Reserves Management Act 1977, to grant easements over reserves. Under Section 48 of the act council is enabled to grant easements for a service or right of way over a reserve to service a third party outside a reserve.

However, it has been noted that council property has been utilised in the past to provide underground services or right of way access for private benefit in the form of easements. Ultimately, an easement encumbers a property, which can result in a restriction of the current or intended or future use of the property. Council has a responsibility to the community to protect property assets for current and future use, therefore this policy has been designed to provide guidance in regards to applications for easements across council property.

It has been determined due to the encumbrance an easement places on a property, that easements across council property are not favoured unless the applicant can provide proof of public benefit or there are no alternative measures but to access council land.

1.1 Purpose

The purpose of this policy is to:

- Describe Queenstown Lakes District Council (herein after referred to as the Council) position on easements across land owned and/or managed by Council.
- Outline the circumstances in which easements will be considered by Council.
- Identify the effects an easement will place on the property and identify mitigation measures, which could be implemented through engineering designs of said easement.
- Outline the steps that must be taken when an applicant (organisation or individual) wishes to use Council land for a private easement on a long-term basis.
- Formalise the use of Council property regarding easements, through appropriate legal agreements and registration of the easement on the Certificate of Title.

NOTE: This policy excludes services placed within Road Reserve. These are to be dealt with by a separate application process.

1.2 Scope

This policy applies to:

- Long term easements over Council land where Council wishes to retain ownership or management of land.
- Use of: a) Reserves.
b) Land owned or managed by Council.

New, Existing and Unauthorised Easements over Council Land

From date of enactment of this policy all future requests for easements over Council land will be treated in accordance with this policy

Council (through APL PROPERTY) will seek to formalise all existing unauthorised private uses of Council land. In such case the existing unauthorised use will be treated in the same manner as a new application.

Right of Way easements through reserve land

It should be noted that any easement granted on reserve land will be subject to the requirements of the Reserves Act 1977. That will normally involve the following process:

1. Approval of the Community Services Committee of Council.
2. Public notification calling for submissions.
3. A hearing pursuant to the Reserves Act if necessary.
4. A resolution of Queenstown Lakes District Council.
5. Consent of the Minister of Conservation.

The process can take some months and any costs incurred will be borne by the applicant.

2.0 Applying for an Easement

Summary

- Enquiry
- APL PROPERTY send out information pack
- APL PROPERTY receives written application
- APL PROPERTY considers application
- APL PROPERTY liases with General Manager Community Services and Parks Manager (if applicable), then the application will be presented to the Property Sub Committee of Council for consideration (if nessescary)
- Consultation if required (Reserves Act 1977)
- Approve/Decline application

2.1 Applications

Applications should be made in writing on an easement application form (see appendix). The application must describe the proposed use and include a plan detailing the following:

- **Legal Descriptions:** legal boundaries, legal descriptions of the area and any adjoining properties, which may be affected.
- **Approximate position:** the approximate position of the underground service must be detailed on a plan, this includes sewer, storm water, water supply, gas, electricity and telecommunications pipes/conduits. The approximate route of the proposed Right of Way (if applicable) must be detailed on a plan.
- **Buildings:** The positions of adjacent buildings in relation to the proposed easement.
- **Topography** – including embankments, trees, roads, footpaths, kerbs, berms, rivers if applicable.

In addition to the above-mentioned details the applicants must provide evidence/descriptions of:

- **Private Property:** description of private property(s) which may be potentially suitable as an alternative route for the proposed easement.
- **Explanation:** why is Council property being used? Applicants must provide details of all attempted avenues.
- **Consultation:** A list of groups must be provided who have been consulted and their respective views on this easement.
- **Engineering:** Approval from QLDC Engineering regarding the design of any stormwater pipes, culverts, bridges, settling tanks, gas and all other utilities/services.

2.2 Application Assessment

Upon APL PROPERTY receiving a completed easement application, APL PROPERTY will present underground easement applications to the Property Sub Committee of Council for review and comments. Right of Way easements will be referred to the Community Services Committee.

2.3 General Considerations

a) Councils General Policy Position

Council holds and manages land for specific purposes; this purpose takes priority over any proposed easements that are contrary to the purpose of Council.

Council seek to own and maintain property for a current or intended use, easements across this property is discouraged unless use is required under extreme circumstances.

ii) Applicants ability to use other land

Applicants should attempt to use their own land or make arrangements with private parties. A list documenting evidence/records of alternative attempts should be supplied on application, along with reasons as to why these options were unsuccessful.

ii) Ability to use Council Land for the Proposed Purpose

The Council will consider if there are any legal impediments or future directives to the proposed use of Council land that are of such significance that consideration of the proposal ought not to continue. Council reserve right

to decline applications which are inconsistent with Councils proposed use of the land.

b) Alternatives

On receiving an application Council will consider whether there are any other appropriate alternatives regarding the application, consideration will include:

- Whether inability to use Council land will cause significant hardship to be applicant.
- Whether it is practically possible to use private land for the proposal.

If it is deemed that there are practical alternatives, Council reserves right to refer the application back to the applicant to pursue the alternatives.

c) Consultation

The applicant must provide evidence that all affected parties have been consulted and disclose evidence of any approvals/refusals obtained, including iwi and/or Ngai Tahu if application.

Council reserves right to advise the applicant of any other group or organisation whom should be consulted, applications may be referred back if:

- The applicant has failed to consult with groups that Council deem will be affected by this proposal.
- A consulted parties opinion on the proposal has not been suitably communicated to Council.

d) Councils Intended Use

The Councils need for and the purpose of the Council land will take priority over any proposed private use

e) Applicants Proposed Use

As landowner, Council has an obligation to ensure that the proposed use of any council land is consistent with how Council wishes the land to be used. All services should be laid underground to allow some continued use of the property by the public in the future.

When applying for an easement the applicant should consider:

- Whether it will be possible for the general public to have continued access to the land
- Intended length of use
- Likely impacts of the easement
- Long term benefits and disadvantages to the community.

The applicant and their contractors will maintain the easement construction area in a safe and tidy condition at all times.

3. Costs/Fees

- The applicant pays a one off compensatory payment for the privilege of having the easement encumbrance placed on the Councils title:

a. Underground Services Easements

Application Fee: \$600 + GST

Application fee will be made payable to APL PROPERTY, this fee will be charged once a written application is received at this office.

Easement Fee: charged at 30% of land value. Land value will be obtained from Rating Valuation.

Example

Land value of property is	= \$300,000
Size of property is	= 800m ²
Easement length applied for	= 33 m ²

Calculation:

\$300,000/800m ²	= \$375m ²
30% of \$375m ²	= \$112.50p/m ²
\$112.50p/m ² x 33m ²	= <u>\$3,712.50</u> exe GST

b. Right of Way Easements, Commercial/Industrial Easements & Complex Easements

Application Fee: \$1,320.00 + GST

Easement Fee: to be determined by individual valuation and set at market rate per square metre.

- All applications are subject to an application fee except for QLDC applications and must be made payable to APL Property. All information/advice given before receiving the application fee is free of charge.
- In addition to these charges the applicant must cover all costs associated with:
 - The survey and registration of the easement on the Councils title.

- Legal fees
 - Department of Conservation approval
 - Advertising costs
- Council reserves the right to identify easements which may require individual valuation to establish an easement charge, due to the complex nature of the application.

4. Bonds

All successful applications will incur a \$1,000 (minimum) to \$5,000 (maximum) bond. A temporary access licence will not be issued until this bond is received.

This bond should be made payable to Queenstown Lakes District Council and will be held in the councils trust account.

The bond may be used to rectify any problems which have been identified during the construction of the easement.

Releasing of Bonds:

Bonds will be released when:

1. An inspection has been completed to ensure the land has been reinstated to Councils requirements and Turf Specifications have been met; and
2. APL PROPERTY has received a surveyed easement plan and the signed Deed of Easement document from the applicant; and
3. All fees incurred in granting the easement have been paid.
4. The applicant has provided APL PROPERTY with a copy of the new certificate of title showing the easement has been registered

5. Legal Documentation

On approval of easements the applicant may instruct their solicitors to draft appropriate easement documentation. This documentation must be forwarded to APL PROPERTY for review. Costs incurred from preparation of easement documentation must be borne by the applicant. Councils solicitors may also draft easement documentation, however the applicant will have to pay all costs incurred.

Easements must be registered on the title, the applicant is responsible for registering the easement on Councils title. The bond will not be released until the easement has been registered on the title. All costs associated with registering the easement on the title must be borne by the applicant.

6. Legislative Requirements

Approval to an application is given by Council acting in its roles as a landowner only.

Depending on the use of the land and type of land involved, requirements of the following acts may need to be considered:

- Reserves Act 1977
- Resource Management Act 1991
- Public Works Act 1981
- Local Government Act 2002
- Ngai Tahu Claims Settlement Act 1998
- Land Transfer Act 1952

6.1 Ministerial Delegations

All easements granted through Crown Land vested in Council under the Reserves Act 1977, will require consent from the Minister of Conservation.

6.2 Temporary Access

To access the property for initial survey/planning a temporary licence must be obtained from APL PROPERTY.

7. Construction

7.1 Temporary Access

If the applicant is successful at obtaining approval to construct an easement, prior to the commencement of works the applicant must obtain a temporary access licence from APL PROPERTY, (see appendix).

Photos of the property must be supplied with the temporary access licence application to assist APL PROPERTY in monitoring the re-instatement of the property.

The applicant and their contractors must maintain the easement construction area in a safe and tidy condition at all times. If required appropriate signage and fencing must be placed.

7.2 Reinstatement

Once the easement has been constructed the applicant is to reinstate the property to councils satisfaction including QLDC's Turf Reinstatement Specifications January 2007.

Council reserve the right to withhold bonds if the reinstatement of the property does not meet council standards and satisfaction.

7.3 Safety

The applicant must satisfy the Council that any safety, nuisance or other liability issues have been identified and managed appropriately.

On approval of the application the applicant shall enter into public liability insurance for the minimum amount of \$1,000,000 to indemnify the Council from any claim against the Council arising directly or indirectly as a result of the applicants use of the property.

7.4 Completion of Work

Upon completion of work, and within three months, the applicant must provide APL PROPERTY with:

- A completed surveyed easement plan and the signed Deed of easement.
- A copy of the new certificate of title for the Council land showing that the easement has been registered.

Council maintains the right to withhold the bond until such documentation is presented to APL PROPERTY.

7.5 Maintenance and/or Upgrade of Easement

Once the easement has been granted and constructed, should maintenance and/or upgrade of the service be required the grantee must then apply to APL PROPERTY for a temporary access licence to gain access to the property during this works period.

Council may require a Bond for any such work and reserve the right to use this bond if reinstatement of the property subsequent to the maintenance/upgrade does not meet council satisfaction or standards.

8. Reserves Vested on Subdivision

Where land is to be vested in Council on subdivision, it will be assumed to be free of any encumbrances.

If such land is to include easements, they must either be shown on the plan approved when Council approves the vesting, or the developer must apply for a new easement pursuant to this policy.

For clarification, if easements are shown on the land when it has been approved by Council, no charge will be incurred. In this case the developer will be responsible for ensuring the easement is registered on the title.

If the easement is applied for subsequent to acceptance of the vesting by Council, the applicable charges outlined in this policy will apply.