

STAFF REPORT

TO: Chair and Members, Engineering Services Committee

FROM: Dugald Ley, Development Engineer

REFERENCE: R887

DATE: 10 September 2010

SUBJECT: **Licence to Occupy Road Reserve – RESC10-09-10**
Report prepared for meeting of 30 September 2010

1 PURPOSE

- 1.1 The purpose of this report is to clarify an aspect on which licences to occupy (LTO) road reserve are based following the previous report submitted at the Engineering Services Committee on 27 May 2010, and specifically to confirm the quantum of the application and annual licence fee chargeable for LTO agreements.

2 BACKGROUND

- 2.1 Councillors may be aware that Tasman District Council has policies relating to leases or licences for private occupation and use of roads. Some of these policies are outlined in the Council's Roading Policy and Procedures Manual, August 2005 (approved ESC August 2005) and reprinted in 2008. This document is due for revision and will likely come before the committee within 12 months.
- 2.2 The use of Council's road reserve can be varied from "as of right to be there" such as Network Tasman and Telecom being approved network utility operators (defined under the Electricity Act 1992 and the Telecommunications Act 2001) to farmers for grazing, commercial operators for street dining, cycle/running competitions and market days to name a few.
- 2.3 Administration of these can be covered by either the Engineering Department or the Property Services division of Council. Generally, agreements for pipes, conduits, and assets under the road are dealt with by Engineering Services, whereas occupations and structures on the road are generally (but not always) covered by the Property Services division.
- 2.4 Practices have been developed in the two departments of Council using different systems, ie private infrastructure located under the road surface is covered by a Road Opening Notice and a Licence to Occupy.
- 2.5 Activities or infrastructure on the road are generally covered by licence agreements and the payment of an annual charge per square metre of occupation. In regard to the latter the area of road reserve is licensed for private use.
- 2.6 For services under the road the area "above" the private service is still available for the public, ie access over it. However there may be a risk to the Council's road

assets and to the public generally if something goes wrong with the private service under the road carriageway.

2.7 With private services under the road, the 2005 policy was split into three categories:

- a) Permit
 - b) Written approval - Road Opening Notice (RON)
 - c) Licence to Occupy Road (LTO).
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- a) Permit – This takes the form of a two-page application to the Engineering Manager, for example to carry out earthworks to adjust the access to a paddock or cattle stop, or install a gate, temporary fence, stock race etc.
 - b) Road Opening Notice – Written approval is required and is mainly used for approved Network Utility Operators but can include stock underpasses which vest with Council on completion.

It is noted on page 233 of the Annual Plan 2010/2011 that the fees are as follows:

- Fencing on Road Reserve (also gates, other structures) - \$296 plus inspection costs;
 - Officer Inspection fees - \$130.00 per hour;
 - Road Opening Notice
 - Permit perpendicular to road - \$409 plus actual costs (\$200 refundable on satisfactory completion);
 - Permit parallel to road - \$174.00 plus actual costs (bond of \$100 per 100 metres up to \$5,000.00).
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- c) LTO - This agreement includes the provision of an application fee plus an annual licence fee to administer the licence, and a review clause to reassess the fee annually. This agreement was further developed in consultation with Council's legal advisors and in 2008 the Engineering Services Committee ratified the fundamentals of the LTO via clause 2.3.14 of the Tasman District Council Engineering Standards and Policies 2008, viz:

Licence-to-Occupy

Where private services are proposed to be located within road reserve at the approval of Council on Council-owned land, the applicant is required to enter into a Licence-to-Occupy (LTO) agreement. This agreement is entered into by the applicant (a generic draft document is available on request).

The agreement will include, but not be limited to:

- a yearly licence fee;
- bond amount;
- public liability insurance; and
- an administration fee and actual costs incurred by Council in completing the agreement.

The applicant should arrange this document to be compiled by Council at an early stage and prior to a 224 certificate. (Applicable for subdivision)

- 2.8 The LTO agreement has been reviewed by Council staff and solicitors on a number of occasions and reconfirmed in the attached legal opinion from Fletcher Vautier Moore. The LTO protects both Council and the owner of the private infrastructure at the outset and into the future.
- 2.9 It is noted that of other councils contacted most do not have standard licence to occupy agreements. It appears to be common that other councils either allow private assets in the road via a road opening notice only, or rely on a standard formula for a yearly rental of the area occupied plus a one-off charge for administration.
- 2.10 Our legal advice attached suggests it is more appropriate to protect Council's position and that of the private asset owner by way of a formal licence to occupy agreement.

3 COMMENT

- 3.1 This report seeks to establish the quantum of the LTO application fee and the annual licence fee. Councillors can see that permits, consents, and approvals to work/be on the road can be many and varied. The schedule of charges is equally varied.
- 3.2 As noted in clause 2.3.14 of the Engineering Standards and Policies 2008 above, the LTO application fee and annual licence fee is the key issue addressed in this report.
- 3.3 The present LTO annual licence fee which covers the administration charge for the first year is \$200 plus GST. There are five existing licences which Council has already entered into on this basis.
- 3.4 Pre existing private services
The need for LTO for pre existing private services in roads will need to be assessed on a case by case basis, however in most instances it will be in the best interests of the private infrastructure owner to get authority for their asset to be in the road and also for any future owner when property is sold.
- 3.5 At the very least for all installations including pre-existing private services, Council is legally obliged to be aware of their location, details, who owns them and have a system in place for the transfer of information to the new owners (if appropriate) when the property is sold. This work incurs a cost to Council and hence a fee should be charged to recover these costs in most cases.
- 3.6 Licence Fees
It is recommended that the application fee for LTO's be standardised.
- 3.7 However the annual licence fee (which covers administration, occupation of public land etc) should be allowed to vary and therefore differentiate between say a 20mm diameter low pressure water line and a 2.0 metre diameter penstock (pressure main).
- 3.8 The LTO application and annual licence fee could be appropriately assessed as follows:
- a) Road Opening Notice - Where excavation in the road/road reserve is proposed then a Road Opening Notice is required with a fee of \$209.00 plus GST. This covers vetting of the Traffic Management Plan, reinstatement conditions, initial site inspection(s) and follow up inspection after final reinstatement.

- b) An LTO application fee of \$200 plus GST plus any specific legal costs (consistent with the Road Opening Notice from the Annual Plan fees and charges) to cover officer's time, set up and maintenance of database, input into Tasman District Council GIS system.
- c) Subsequent LTO annual licence fee of \$100 plus GST minimum, but has a sliding scale depending on;
 - the size of the infrastructure, ie pipe diameter
 - the length of road occupied by the private infrastructure.

3.9 The graph attached provides an example starting with the diameter of the pipe at the bottom; 100mm diameter pipe up to where a line touches either 20 metres (pipeline straight across the road) or any distance down the road (100 metres or more – top line). So for a 100mm pipe directly crossing the road (20 metres) the annual licence fee is shown on the left hand side, in this case \$175 plus GST and including CPI adjustments for subsequent years of the LTO agreement.

4 RECOMMENDATION

4.1 THAT the Licence to Occupy Road Reserve report, RESC10-09-10 be received by the Engineering Services Committee.

4.2 THAT the Licence to Occupy agreement for private services in Council roads comprises three fee attributes as outlined in the Licence to Occupy Road Reserve report, RESC10-09-10:

4.2.1 A Road Opening Notice fee presently \$209 plus GST (as per the Annual Plan).

4.2.2 A Licence to Occupy application fee of \$200 plus GST.

4.2.3 A subsequent annual licence fee plus GST to be assessed using the graph supplied in the report RESC10-09-10.

Dugald Ley
Development Engineer