

ENCROACHMENT OF ROAD RESERVE POLICY

Item A-PT (13-2005)
CM 30/06/2005

ENCROACHMENT OF ROAD RESERVE POLICY
OF EKURHULENI METROPOLITAN MUNICIPALITY

RESOLVED:

1. **That** the proposed Encroachment of Road Reserve Policy for Ekurhuleni Metropolitan Municipality **BE APPROVED**.
2. **That** the Encroachment of Road Reserve Policy for Ekurhuleni Metropolitan Municipality **BE IMPLEMENTED** with effect from date of approval.
3. **That** the Encroachment of Road Reserve Policy for Ekurhuleni Metropolitan Municipality **WILL REPLACE** all previous policies on Encroachment of Road Reserves.
4. **That** all existing agreements **BE HONOURED** until they lapse, after which, if an application is made, it **BE RECONSIDERED** in line with the new policy.
5. **That** the implementation of the Encroachment of Road Reserve Policy for Ekurhuleni Metropolitan Municipality **BE DONE** on the basis of valuations.



Ekurhuleni
METROPOLITAN MUNICIPALITY

EKURHULENI METROPOLITAN MUNICIPALITY

ENCROACHMENT OF ROAD RESERVE POLICY

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ENCROACHMENT OF ROAD RESERVE POLICY OF EKURHULENI METROPOLITAN MUNICIPALITY

CHAPTER 1

1.1 INTRODUCTION

The road and the area adjacent to the road on either side, which stretches to the adjacent properties, commonly known as the 'pavement' in layman's terms or 'road shoulder', makes up the road reserve. This 'road shoulder' is an important asset to Council as it provides an area in which essential and sometimes bulk infrastructure is placed underground. In other words, it acts as a 'servitude' to services provided to the public and all stakeholders within Ekurhuleni Metropolitan Municipality. This placement of services in the road shoulders allows for easy access and quick access to the underground services, otherwise the services must be placed under the tarred road making the maintenance of the services much more expensive.

Roads reserve widths are also determined keeping the function the road must fulfill in mind. It is essential that the operating speed, the functional class of the road and services be considered in final determination of such road reserve widths. The main aim of this approach is to ensure that safety not only to the road user but also to non-motorized transport (pedestrians and cyclists) and the residents. The road shoulder also, more importantly, provides walkways for the public, thus preventing pedestrians walking on the tarred section of the road itself, reserved for motorist. Apart from safety to people, the safety to property also needs to be considered.

It is no wonder that the road reserves are an important asset to Ekurhuleni Metropolitan Municipality and the management of the road reserves cannot be further stressed. Recently, there has been a tendency by the public and property owners adjacent to the road reserve to apply for encroachment on to the road reserve. Therefore in order to ensure the safe guarding of this important asset an official policy has to be developed to provide optimal benefit from the road reserve.

The Department of Roads Transport and Civil Works are the custodians of the roads and the road reserves. For this reason the Department of Roads, Transport and Civil Works, feel that the policy on encroachment must be compiled in order to ensure proper management of the road reserves.

1.2 PROBLEM STATEMENT

At present there are a number of various policies for the encroachment of road reserves by the different Service Delivery Regions and Customer Care Centres that make up Ekurhuleni Metropolitan Municipality. Thus, the approval of encroachment on to the road reserves within Ekurhuleni Metropolitan is not done in a uniform manner and this poses a problem with regard to fairness and transparency to applicants. This policy, therefore aims to provide a uniform policy that can be used to provide equitable approval of encroachment of adjacent properties on to the road reserves.

1.3 PURPOSE OF THE POLICY

The purpose of compiling a policy for the encroachment by adjacent properties onto the road reserve is to provide a uniform policy that can be used by Ekurhuleni Metropolitan Municipality when adjudicating applications for the encroachment of road reserves. The policy must also ensure that the road reserves are properly managed and protected in order to provide the necessary service delivery to the public and all stakeholders affected.

1.4 OBJECTIVES OF THE POLICY

- To State the Policy of Ekurhuleni Metropolitan Municipality with regard to the encroachment of road reserves
- To provide guidelines to applicants in terms of the required contents of applications, procedures to be followed and the responsibilities in terms of costs
- To provide guidelines to officials of Ekurhuleni Metropolitan Municipality, towards the effective processing and evaluation of applications for the encroachment of road reserves.
- Aims to achieve and rectify the status of encroachment that is occurring on Council Road reserves
- Aims to achieve a uniform policy of encroachment that can be applied with transparency through Ekurhuleni Metropolitan Municipality.
- Aims to achieve a good management of all road reserves within Ekurhuleni Metropolitan Municipality

CHAPTER 2

2.1 PREAMBLE

Council realizes that in order to maintain effective and efficient functioning of the road infrastructure within Ekurhuleni Metropolitan Municipality, the issue of encroachment has to be addressed in a uniform manner. Council therefore commits itself to ensure that the encroachment of road reserve policy is applied in a transparent and equitable manner. The policy aims to ensure that no one applicant is disadvantaged over another when applying for the encroachment of property on to road reserves. The policy also aims to provide a guideline and necessary warrants for the proper management of road reserves and the encroachment the road reserves.

Council shall therefore ensure that the policy on the encroachment of road reserves will allow for the proper management of road reserves and must provide a guideline for the transparent approval or rejection of applications for the encroachment of road reserves.

2.2 LEGAL FRAMEWORK AND LEGISLATION

Legislation, which may have a bearing effect on the road reserve policy

- Municipal Systems Act, 1998
- Local Government Ordinances
- Town Planning Scheme
- Development Bill, 2002
- Development Facilitation Act of 1995

CHAPTER 3

3.1 CONTENT OF POLICY

The Department Roads Transport and Civil Works receives a number of applications, or request for comments on envisaged encroachments onto road reserves. The Department Roads Transport and Civil Works is of the opinion that these type of applications must be handled with care and tact. The reason being, that the Department Roads Transport and Civil Works feels that the encroachment of road reserves should be discouraged and only approved under very special circumstances:

3.2 FACTORS TO BE CONSIDERED

The main issues or factors to be taken into account during the formulation of an appropriate policy and procedure are discussed below:

1. *Road reserves are determined with specific goals in mind like amongst others the accommodation of services within a road reserve, that is apart from the obvious reason of allowing for the construction of roads, walkways, etc. Road reserves are also determined based on the function of the road. Matters like the envisaged volumes, the operating speed on the section of road, etc. play an important part in the determination of road reserve widths as it have a direct bearing on the safety of the motorist as well as the adjacent residents.*
2. *This department is further of the opinion that encroachments might lead to the creation of a precedent, which can cause serious problems in the management and protection of road reserves and can have an adverse effect on the aesthetical appearance of the neighborhood.*
3. *The impact of these encroachments are more applicable to the underground services like water, sanitation, electricity, Telkom, etc. The negative impact on service delivery due restraint access to services that have been encroached is a cause for concern.*
4. *Furthermore, from previous experiences of servitude registrations and the practicalities of policing these encroachments creates capacity problems and would stretch the Councils over capacitated service sections further.*
5. *Viewed from a roads perspective alone, the encroachments can have a negative impact on sight distances in general, thus negatively impacting on the safety to motorist and pedestrians.*
6. *From a stormwater point of view the encroachment should not pose major ethical problems however should water be dammed due to a*

encroachment there could be a possible legal backlash with neighbours complaining about flooding of driveways, loss of property and thereby holding Council liable. This could be seen from a point of view that the damage was caused by the encroachment, which was approved by Council.

7. *Safety Concern as the staggered road reserve will impact on visibility and negatively impact the general safety of the neighbourhood*
8. *The matter of prescription. Successors in title will not always be aware of prior arrangements/contracts and might be misled the property belongs to them.*

From the above mentioned views and issues it is recommended that encroachment of road reserves be discouraged and not allowed. Those encroachments that have been approved will be allowed to remain until the encroachment agreement lapses and then will not be renewed. The view mentioned above is the view of the Department of Roads Transport and Civil Works and this common view should be adopted for the encroachment of road reserves throughout the Metro.

The above view therefore represents the formal position of the department on the matter. However, the department does not want to be rigid and inflexible in its view and therefore regardless of the view commented on above, the Department of Roads Transport and Civil Works feels that, only in very exceptional cases where there are grounds for encroachment on a road reserve, will the encroachment be investigated. Please note that only under exceptional cases, will the following guidelines for encroachment be considered.

The encroachment of road reserve will be investigated and comments should be made on a regional level. The regions will use specific guidelines and warrants, provided for in this document, in order to approve or reject the application for encroachment of road reserves.

3.3 GUIDELINES FOR ENCROACHMENT OF ROADS RESERVE (ONLY EXCEPTIONAL CASES)

Taking into consideration the above mentioned issues and/or factors the following guidelines are envisaged:

- ▣ The only exceptional case for encroachment of road reserves will be that there are
 1. No existing or planned underground services affected by the proposed encroachments, **AND**
 2. The function of the road is not jeopardized, **AND**
 3. Sight distances are not negatively affected, **AND**

4. The aesthetical appearance of the neighbourhood is not adversely affected. Staggered road reserve will not be allowed. This implies that the whole block must apply for such an encroachment in a uniform manner, **AND**
5. The existing encroachment area that is applied for is an odd piece of land that has no existing services or planned services will traverse through the land

(A checklist with above requirements has been provided in Annexure A for ease and practicality)

- In the event of an application not fulfilling the factors for an exceptional case for encroachment of road reserves and in the interest of providing service deliver, the Regional Director: Corporate and Legal Services will be delegated to correspond with the applicant that the application for encroachment of road reserves has been declined.
- When an exceptional case has been identified, the Regional Director: Roads Transport and Civil Works in conjunction with the Regional Director: Municipal Infrastructure will investigate the proposed encroachment
- Over and above the investigation of the encroachment by the Regional Director: Roads Transport and Civil Works and the Regional Director: Municipal Infrastructure, all external service providers must be notified and the necessary approval for the encroachment must be finalized from these external service providers. The External Service Providers are those service providers namely Eskom, Telkom, Rand Water etc.
- The applicant must provide all the necessary documentation such as locality maps, street names, stand numbers etc. before the encroachment will be investigated
- All comments, objections, and recommendations by the Regional Directors mentioned above will be submitted to the Corporate and Legal Affairs committee for final approval of the encroachment of the road reserve.

3.4 PROCESSES AND PROCEDURES

The processes and procedures for encroachment of road reserves for exceptional cases will be as follows:

1. The applicant will make an application for the encroachment of road reserves at the Department of Corporate and Legal Services.
2. The department of Corporate and Legal will accept the application and ensure that all required documentation is received with the application for encroachment of road reserves. The documentation mentioned, refers to

locality maps, stand numbers along entire road reserve, road/street name of road reserve in question and motivation for encroachment.

3. Once all the necessary documentation is received from the applicant, the Department of Corporate and Legal will distribute the application to the regional offices of all the affected Departments, namely the Roads Transport and Civil Works and Municipal Infrastructure
4. The above mentioned documentation will also be circulated to the external services authorities such as Eskom, Gascor, Telkom, Rand Water etc. for comment
5. The applications will be sent to the regions affected with a copy of the application to the respective head offices for information and if necessary comments as well.
6. The regional departments will then ensure that all the sections within the respective departments make the necessary comments.
7. The comments must be replied to within the stipulated 10-day period and received by the department Corporate and Legal in this time.
8. It must be noted that failure to comment by the respective departments, by the stipulated 10 five-day period mentioned in 7 above, will not imply approval for the proposed Encroachment of Road Reserve. However all possible effort must and be taken by the departments affected to finalize comments within 30 working days of the submission for encroachment of road reserve. Failure to comment within the 30 working days will result in the declaration of no objections to the application for encroachment of road reserve under an exceptional case as noted in 3.3 above.
9. Those encroachments that have been approved prior to this encroachment of road reserve policy will be allowed. However, as soon as the encroachment or lease agreement has expired, the encroachment will be required to be removed at the expense of the owner of the property to which the encroachment of the road reserve has been agreed.
10. Department of Corporate and Legal will manage and administer the applications as well as administer and control those existing encroachment of road reserve mentioned in 9 above.
11. Should the encroachment of reserve be approved, the encroachment of road reserve will be leased for a period of no more than five years before there will be a final decision to change ownership of the encroached road reserve or renew the lease for further five years.

12. The Lessee should provide a guarantee for the future removal of whatever is that encroaches. This guarantee will be used to remove the encroachment should the applicant fail to remove the encroachment. The guarantee will be in the form of a cash deposit of no less than R 2 500-00 (two thousand five hundred rands).

3.5 TARIFFS

The department Corporate and Legal Affairs will, once the encroachment has been approved by the Strategic Executive Director: Infrastructure Services, determine, in line with applicable tariffs and land values, with the applicant a tariff for lease of the land.

ANNEXURE A

CHECKLIST FOR EXCEPTIONAL CASES

Question	Re
1. Will any existing or planned underground services be affected by the proposed encroachments?	Yes
2. Will the function of the road be jeopardized by the proposed application for encroachment?	Yes
3. Will the sight distances be negatively affected by the proposed encroachments?	Yes
4. Will the aesthetical appearance of the neighbourhood be adversely affected by the proposed encroachments?	Yes
5. Will the proposed encroachment result in a staggered road reserve? (This implies that the whole block must apply for such an encroachment in a uniform manner)	Yes
6. The existing encroachment area that is applied for is an odd piece of land that has no existing services or planned services that will traverse through the odd piece of land?	Yes
7. (If there are no rejections resultant from the above questions for the proposed encroachment application; then the application for encroachment of road reserve can be approved and recommendations by Regional Directors: Municipal Infrastructure and Roads Transport affected departments)	