
REPORT 2
(1215/52/IM)

RESOLUTION TO DECLARE A SECTION OF MOUNT VICTORIA ROAD TUNNEL AS LEGAL ROAD

1. Purpose of Report

To seek the Committee's approval to declare the last remaining section of the surface that runs through Mount Victoria road tunnel as legal road. The current legal status of this section is Town Belt.

2. Executive Summary

The Mount Victoria tunnel was constructed in 1931 and has been used by traffic and pedestrians since this time. Declaring the surface that runs through the Mount Victoria tunnel as legal road will rectify a long-standing legal anomaly, and will not physically affect the surrounding Town Belt land.

Several sections of the surface (around two thirds of it) were 'taken for street purposes' in 1932 and 1935, and declared as legal road in 1995 and 1996.

The Wellington Town Belt Management Plan 1995 identified a section of the Mount Victoria tunnel that had not been formally declared legal road.

Section 50(2) of the Local Legislation Act 1929 enabled land held as Town Belt to be used for creating the Mount Victoria tunnel for roading purposes. The Public Works Act 1981 section 114(2) provides for the Council to declare land as road.

While the land has been taken by enabling legislation (the Local Legislation Act 1929) for roading purposes, for the remaining section to be declared as legal road Council resolution and notification in the *Gazette* is required.

3. Recommendations

Officers recommend that the Committee:

- 1. Receive the information.*
- 2. Agree that the remaining section of the surface of Mount Victoria tunnel (shown as area E on attached drawing 08006-1 in appendix 1) be declared as road.*

3. *Delegate authority to sign the appropriate legal documents for land owner consent to the Council's Chief Executive Officer.*

4. Background

The title WN48B/341 is held upon trust as a public recreation ground by the Wellington City Council, and is subject to the powers in Deed 40240 (67/266), commonly referred to as the Town Belt and Basin Reserve Deed 1873 (the Deed).

The declaration of the surface as legal road will remove it from the Town Belt, albeit at the substratum level. The Deed is clear that no thoroughfare may be created across Town Belt, which is why enabling legislation was created for the construction of the Mount Victoria tunnel.

The Local Legislation Act 1929 section 50(2) provided that:

The said Council may take [land]... as necessary for the construction of such new street by way of tunnel... through the Town Belt, and the area... shall become a [road]... and vest in the [Council] accordingly.

In 1989 officers noted that a part of the road had not been taken out of the Town Belt and declared road. This was identified in the Town Belt Management Plan 1995. An undertaking was given to the New Zealand Transport Agency (NZTA) at this time to declare the surface as legal road, because the surface of the tunnel forms part of State Highway One. Currently NZTA maintains the road surface, and declaring the surface as legal road will formalise this situation.

A resolution to declare land as road upon Town Belt is conditional upon obtaining approval from iwi, Friends of the Town Belt, and the Minister of Conservation. Officers have consulted with iwi and Friends of the Town Belt and obtained their approval. Approval from the Minister of Conservation will be sought once the Council has resolved to declare the surface as legal road.

5. Discussion

The Local Legislation Act 1929 was created to enable a section of land within the Wellington College site and adjoining Town Belt land to be taken from the Town Belt and used to create the Mount Victoria tunnel. The tunnel was subsequently built in 1930-31.

In 1932 and 1935 sections of the surface were surveyed, taken for street or road purposes, and later gazetted in 1995 and 1996. The section of the road that this report references (shown as section T on SO plan 30973), at the eastern end of the tunnel, was not taken for street purposes at that time. This last section retains an underlying legal status of Town Belt land.

In 1989, the City Solicitor identified this anomaly and wrote to the City Surveyor recommending the surface be declared road. He noted that while sections of road had been taken for street purposes, the whole area should be formally dedicated as road. This was not taken up by officers at the time and remained Town Belt land until two sections were declared legal road in 1995 and 1996.

While the surface of the Mount Victoria tunnel has been used for road for approximately 80 years, a legal anomaly remains. Most of the surface has been declared road, and officers recommend resolution by the Council to declare the last remaining section of the surface legal road to rectify this. Friends of the Town Belt, local iwi, and business units within the Council have been consulted as part of this process. All consulted parties are supportive of the surface being declared legal road.

6. Conclusion

Pursuant to section 50(2) of the Local Legislation Act 1929, the Council has taken the said land within the Town Belt shown T on SO 30973, being part of the substratum of the Mount Victoria tunnel, for road.

Pursuant to section 114(2) of the Public Works Act 1981, the Council may then resolve that this section be declared road, and gazetted as such.

Pursuant to Schedule 7, clause 32 of the Local Government Act 2002, the Strategy and Policy Committee may delegate authority to sign landowner consent documents to the Chief Executive Officer.

Contact Officer: *Heather Cotton, Property Advisor.*

Supporting Information

1) Strategic Fit / Strategic Outcome

This resolution supports the Council's strategic directives as identified in the Town Belt Management Plan.

2) LTCCP/Annual Plan reference and long term financial impact

While there is some cost associated with the research of information and gaining consent from the Minister Conservation, the expenditure is justified in that Council has identified it as an area of legalisation that should be rectified.

3) Treaty of Waitangi considerations

Iwi have been consulted with as part of this process.

4) Decision-Making

The Town Belt Management Plan 1995 identified this legal anomaly. The New Zealand Transport Agency have been given an undertaking that this section of State Highway One be declared legal road to be consistent with the balance thereof.

5) Consultation

a) General Consultation

Friends of the Town Belt, iwi, and the Roding Unit of the Council have been consulted with. No concerns from these parties were raised. The effects of this decision are limited in that there is no change to an existing situation that has been in place since 1930.

b) Consultation with Maori

Iwi have been consulted and have given their approval.

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

This report recommends measures which are consistent with the Town Belt Management Plan.