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REPORT 5  
(1215/52/IM)

## VESTING OF RESERVE LAND AS LEGAL ROAD UNDER SECTION 114 OF THE PUBLIC WORKS ACT 1981

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### 1. Purpose of Report

To report on the public consultation regarding the proposal to vest 7m<sup>2</sup> of recreation reserve situated between 142 Tirangi Road, Lyall Bay, and Lyall Parade, as legal road under section 114 of the Public Works Act 1981 (PWA), and seek Council approval for the vesting.

### 2. Executive Summary

The Council meeting on 21 April 2011, considered a proposal to vest 7m<sup>2</sup> of reserve land as road, and recommended this proceed subject to public consultation. The Chief Executive was delegated the authority to conclude this proposal unless objections were received. If this occurred a further report would be presented to Council to decide whether to uphold those objections, or not.

Public notification has now been carried out, and three written submissions opposing the proposal were received. All of the submitters wished to make oral submissions. These were heard by SPC on 18 August 2011, some minor additional points were raised.

This report contains the issues and feedback raised through public submissions, presents officers responses and recommendations to Council.

Refer to appendices 1, 2 and 3 for copies of the written submissions from M Weeber, Y Weeber / K Stephens, and S Singh.

### **3. Recommendations**

Officers recommend that the Committee:

1. *Receive the information.*
2. *Recommend that Council:*
  - (a) *Does not uphold any of the three objections opposing the proposal to vest the 7m<sup>2</sup> of Reserve land as Legal Road.*
3. *Notes that the recommendations approved by Council on 21 April 2011 were:*
  - (a) *Agree to the vesting of 7m<sup>2</sup> of recreation reserve land, as shown in Appendix One, between 142 Tirangi Road and Lyall Parade as Legal Road pursuant to section 114 Public Works Act 1981.*
  - (b) *Agree that the Chief Executive be delegated the authority to conclude the vesting of the 7m<sup>2</sup> of recreation reserve between 142 Tirangi Road and Lyall Parade, as shown in Appendix 1, as Legal Road.*

*Conditional on:*

- (c) *Public notification of the intention to vest the land as Legal Road in accordance with section 114 of the Public Works Act 1981, and no objections being sustained; and*
- (d) *The consent of the Minister of Conservation being obtained in accordance with section 114 of the Public Works Act 1981; and*
- (e) *That if objections are received a further report will be presented to Council to decide whether to uphold them or not.*

### **4. Background**

Refer to appendix 4 for a copy of the committee report dated 7 April 2011 which contains background information.

#### **4.1 Original vehicle access approval**

Previous committee reports referred to the original building consent application failing to identify the small area of recreation reserve land situated between the motel and Lyall Parade. In the interests of clarity recent investigations confirm that the reserve land had been clearly shown on the original application plan, but it was not seen, or understood, by the vehicle access officer considering the application at the time.

Officers are confident that this situation could not be repeated as assessment procedures are more robust compared to when the consent for the motels development was originally approved. Development Planning and Compliance are now responsible for vehicle access bylaw approvals.

## **5. Discussion**

### **5.1 Public Notice**

Section 114 PWA does not require public consultation. However given that there were historical objections when the recently expired easement was originally proposed, and that these objectors understood that the long term plan for Lyall Bay would provide a solution to the driveway, it was the Department of Conservation's (DOC) expectation that the objectors, and the public, would be notified of the current proposal.

Notices were placed in the Dominion Post on 14 June 2011, and the Cook Strait News the following day. Letters were sent to the previous objectors, those being M Weeber and the Kilbirnie Lyall Bay Rongotai Progressive Association (KLBRA). Information was available on the Council's website, and from the Council Service Centre, 101 Wakefield Street, Wgtn. The KLBRA did not make a submission.

### **5.2 Recreation Reserve classification**

The Reserves Act 1977 defines the purpose of land with recreation reserve classification as 'providing areas for recreation and sporting activities, and the physical welfare and enjoyment of the public, and for the protection of the natural environment, and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside'.

The intention when the recreation reserve classification was placed over the subject land was that a 'barrier' be created between the privately owned buildings and Lyall Parade, i.e. to give Council control. Given the subject lands short thin tapered shape, it is doubtful whether the subject land is capable of fulfilling any other purpose under the definition.

### **5.3 Department of Conservation**

As outlined in the April 2011 SPC report DOC has been contacted, and the proposal to vest the 7m<sup>2</sup> of land as legal road presented to them. DOC's response was that while the view of the delegate of the Minister of Conservation had not been sought, the proposal was seen as having merit.

#### **5.4 Financial Considerations**

There are no financial considerations in addition to those contained in the April 2011 report. If the recommendations of this report are not approved, then any costs incurred will depend on what course of action is taken.

#### **5.5 Long-Term Council Community Plan Considerations**

There are no significant Long-Term Council Community Plan considerations.

#### **5.6 2004 Objections and resolutions**

The grounds of the objections considered by Council in 2004 are broadly the same as the grounds of the current objections. At that time a recommendation to grant an easement was passed by Council, but DOC's approval was only for five years, as it was hoped that one outcome of the Lyall Bay Integration Project would be a solution to the motels driveway situation. The aim of the Lyall Bay Integration Project had been to comprehensively look at all of the issues affecting the area, the best long term uses of the different zones, and how to improve the area's cohesion and connection. That project is currently on hold indefinitely.

#### **5.7 Objections summary and officers comments in response**

Refer to appendix 5 for a summary of the grounds of the three written objections, the additional points raised in the oral submissions on 18 August 2011, and officer's comments in response.

The main grounds of the objections and brief officer response are –

- **Failure by original developer and WCC to identify that access over the reserve land was needed.** Officer response – Council's failure during the original consent process is acknowledged. Officers are confident that this situation could not be repeated given changes in Council's process since that time. Council approved an easement (perpetual) over this land in 2004, but DOC's approval was only for five years as it was expected that one outcome of the Lyall Bay Integration Project would be a solution to the access. The current proposal is about a final resolution of this access way.
- **Impact of the Motel's access through the sand dunes on the qualities of the recreation reserve land.** Officer response - The subject land is only 7m<sup>2</sup>, and was established as an historic planning tool, its purpose was to prevent access from Lyall Parade and the proposal will not impact negatively on any reserve users.
- **WCC has no long term vision for the Lyall Parade open space between the road and Rongotai industrial buildings.** Officer response - The proposal does not preclude any long term changes to Lyall Parade.
- **Lack of recognition of climate change impacts and considerations of the proposal.** Officer response - Council is working to

assess the impacts of climate change. Any issues related to Lyall Bay are more widespread than for any individual site, and will require an assessment for the entire area.

- ***Precedent of vesting recreation reserve land into road reserve along the coast.*** Officer response - The subject recreation reserve land is only 7m<sup>2</sup>, its change to road reserve will have minimal effect on the recreation values of the reserve and does not set a precedent.

## **5.8 Options**

If the recommendations of this report are not approved, then options on how the motels access over the reserve land would be dealt with would need to be considered. The options are –

1. Let the Motel's existing access remain as it is without an easement. This would be in the expectation that in the near future a long term plan incorporating Lyall Bay would be established, and that would legalise the situation.

Note – This option will leave the motel without legal access across the reserve with no agreed end point.

2. Grant a new right of way easement for a specified time (example five years) to allow for a long term plan for Lyall Bay to be formulated and implemented to legalise the situation.

Note – KLBRA previously indicated that it would support another five year easement. However if no long term plan for Lyall Bay was decided on and progressed, this could result in the same situation occurring in five years time.

## **6. Conclusion**

Officers believe that vesting this area of reserve land as Road will not impact negatively on reserve users, or the wider community.

Climate change issues have been considered, and the proposal has no bearing on the wider implications for Lyall Bay.

It is therefore recommended that the Strategy and Policy Committee recommend to Council that the objections to the proposal to vest 7m<sup>2</sup> of reserve land as road from M Weeber, Y Weeber / K Stephens, and S Singh not be upheld. Also that as a long term solution to the motel's access to Lyall Parade is now required, that the 7m<sup>2</sup> of recreation reserve land situated between it and Lyall Parade should be vested as legal road under section 114 PWA.

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## Supporting Information

### **1) Strategic Fit / Strategic Outcome**

*The proposal is not recommending that a public asset be sold, and it will remain in public ownership if the recommendations contained in this report are approved.*

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

*The proposal does not result in any LTCCP or long term financial impact.*

### **3) Treaty of Waitangi considerations**

*Lyall Bay is noted as being of medium significance in the heritage listing of the District Plan.*

### **4) Decision-Making**

*The report reflects the views and preferences of those with an interest in this matter who have been consulted with.*

### **5) Consultation**

#### **a) General Consultation**

*All consultation required to date has been carried out as described in the report.*

#### **b) Consultation with Maori**

*The Port Nicholson Block Settlement Trust and Te Runanga o Toa Rangatira Inc have been consulted. They both support the proposal to vest the 7m<sup>2</sup> of reserve land as road.*

### **6) Legal Implications**

*The Council's lawyers have not been consulted during the development of this report.*

### **7) Consistency with existing policy**

*This report relates to a matter which is a one off issue hence not part of any policy.*