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**REPORT 1**  
(1215/52/IM)

## **ACQUISITION OF LAND FOR ROAD – 495A OHARIU VALLEY ROAD**

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### **1. Purpose of Report**

This report seeks that the Committee recommends to Council to acquire 832 square metres of vacant land at 495A Ohariu Valley Road pursuant to Section 16 of the Public Works Act 1981, and to vest as legal road.

### **2. Executive Summary**

A portion of the formed Ohariu Valley Road runs over Deeds land which has never had a current land title; see Appendix A to view this area. This land has been defined by Survey Office Plan (SO) 334407, which is attached as Appendix B.

This is an area of residual land after titles were issued for adjoining land many years ago. The last dealing for the land was in the Deeds Index<sup>1</sup> and refers to ownership of the land in the name of Rosina Louisa Majendie, who died in 1902.

The Council intend to acquire the land pursuant to the Public Works Act 1981 and to vest the land as road, to legalise the current use.

### **3. Recommendations**

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*
2. *Recommend that Council:*
  - a) *Agree to acquire approximately 832 square metres of land described as Section 1 Survey Office Plan 334407 and located in front of 495 Ohariu Valley Road for legal road by compulsion under the Public Works Act 1981.*
  - b) *Authorise the Chief Executive Officer to carry out all further steps to acquire the land described in a) pursuant to the Public Works Act 1981 including vesting the land as road.*

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<sup>1</sup> Deeds were the main original record of property ownership before the land titles system; Source: <http://www.linz.govt.nz/survey-titles/land-record-types/deeds>

## **4. Background**

### ***4.1 History and Legal Description***

Historical survey records indicate that 832 square metres of Deeds land fronting 495 Ohariu Valley Road has been occupied by the Council and used as a public road since, at least, 1903.

Following subdivision over the years, this portion of land is still contained as a residue area in Deeds Index 18/364, Deeds Index 24/505 and Deeds Index 3/772.

### ***4.2 Ownership***

The last recorded owner of the land was Mrs Rosina Louisa Majendie. Mrs Rosina Majendie died in 1902, and a legal interpretation of her Probate determined that the sole beneficiary of her estate was her husband, Mr Frank Anson Majendie. Mr Frank Anson Majendie died in 1908.

An advertisement was placed in the public notices column of 'The Dominion Post' on 10 February 2009 seeking successors of Mrs Rosina Majendie to come forward. This resulted in responses from two of Mr Frank Majendie's grandchildren, Russell and Graham Majendie and from Jessie Majendie, the wife of another of his grandchildren. Russell Majendie advised that the marriage between Rosina and Frank was childless; and that after the death of Rosina, Frank remarried and had two children, who are both now deceased.

Russell, Graham and Jessie Majendie were each advised on 26 February 2009 (and again on 7 December 2009) of the situation with the land and of Council's intention to acquire the land. They were invited to establish if they had any claim of ownership by virtue of being descendants of Frank Majendie. Russell advised he would not be pursuing any claim; neither Graham nor Jessie responded to this request.

## **5. Discussion**

### ***5.1 Consultation and Engagement***

It is usual practice when land is required for road to negotiate the acquisition with the owners. In this case, there is no land owner identifiable with whom officers can talk to. In order for any descendants to be recognised as the owner of the residual land, they first have to have their ownership established by the Court. Should any descendant proceed to have their ownership established by the Court, Council will then need to enter into negotiations with the new landowner to purchase the land.

In response to Council's correspondence and public advertising inviting anyone who has an interest in the property to come forward, none have advised of any claim to the land.

On 15 December 2011, Council officers attended the Makara/Ohariu Community Board, who raised no objections to Council's acquisition of the land.

It is important to note that under the Limitation Act 1950 continuous and undisturbed possession for a period of 12 years established the right to claim any land not registered under the Land Transfer Act 1952. Therefore officers believe the Council has a better claim to ownership of this land than any descendant of the original owner.

However, the best legal mechanism available to Council to acquire the land in these circumstances is to compulsorily acquire the land under the Public Works Act 1981. Under this process the Council has to carry out public notification of its intention to take the land for road purposes. This gives the general public, and the descendants of Mr Frank Majendie, an opportunity to object to the proposed taking of the land. Objections and submissions are heard by the Environment Court. Following the hearing of any objections and Council's consideration of the Environment Court findings, the Council may proceed to request the Governor General declare by way of Proclamation the land taken for road.

The process for compulsory acquisition under the Public Works Act 1981 is clearly defined and is strictly adhered to.

## **5.2 Options**

The three options available to Council are:

1. **Legally acquire the land**  
Legal advice received by officers recommends compulsory acquisition pursuant to the Public Works Act 1981 as the preferred process to acquire the land.
2. **Realignment of the road**  
This portion of Ohariu Valley Road could technically be realigned to avoid acquiring the land. However this would mean laying a new road and result in significant costs. These costs are not considered to be the best use of infrastructure funds, and therefore not in the best interests of the ratepayer. This option is not supported by officers.
3. **Status quo**  
The road has been in situ since approximately 1903, and the legality of ownership for the parcel of land has not previously been raised as an issue. However, Council's roading team have identified that the acquisition of this land for road is in Council's best interests as currently they have no registered rights over the land. Accordingly, this option is not supported by officers.

### **5.3 Financial Considerations**

Provision for undertaking this work is contained within the overall organisational budget and is budgeted in Roothing Operations CAPEX Budget RTCX 101.

As there is no current landowner per se, and if there is no challenge to the ownership of this land, there will be no purchase price. Costs against this acquisition will include survey and legal work in the vicinity of \$13,000.

## **6. Conclusion**

It is recommended that the Strategy and Policy Committee recommend to Council, that pursuant to the Public Works Act 1981 the Council undertakes the compulsory acquisition process to take the land at 495A Ohariu Valley Road to vest as legal road.

This acquisition will legalise the current situation, as the formed road currently runs over land to which the Council has no registered rights. The acquisition is also the best option when considering financial expenditure.

#### **Contact Officers:**

*Neil Johnstone, Team Leader- Planning, Road and Traffic Maintenance*  
*Rosalind Luxford, Property Advisor - Property Projects*

## Supporting Information

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

*The report supports Council's overall vision of Creative Wellington – Innovation Capital. The report supports Council's strategic direction for managing growth through provision of adequate infrastructure.*

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

*Provision for undertaking this work is contained within the overall organisational budget and is budgeted in Roading Operations CAPEX Budget RTCX 101.*

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

*There are no Treaty of Waitangi implications.*

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

*A decision to acquire any land requires a Council resolution.*

### **5) Consultation**

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

*Consultation with some family members has been carried out and with the Makara/Ohariu Community Board. Further public notification will be carried out, in keeping with the Public Works Act 1981.*

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

*Local Iwi will be consulted when public notification is carried out.*

### **6) Legal Implications**

*The acquisition process will adhere to the statutory process pursuant to the Public Works Act 1981.*

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

*The proposal is consistent with existing policy to carry out the legalisation of the road.*

**Appendix A**  
**Aerial photograph with subject land highlighted**



**Disclaimer**

Property boundaries, 20m Contours, road names, rail line, address & title points sourced from Land Information NZ. Crown Copyright reserved.

Property boundaries accuracy:  
 +/-1m in urban areas  
 +/-30m in rural areas

Census data - Statistics NZ.  
 Postcodes - NZ Post.

Assets, contours, water and drainage information shown is approximate and must not be used for detailed engineering design.

Other data has been compiled from a variety of sources and its accuracy may vary, but is generally +/- 1m.



Scale 1:1500

**Appendix B**  
**Survey Office plan**

