
REPORT 7
(1215/52/IM)

RIGHT OF WAY ACCESS OVER RECREATION RESERVE - APPLICATION ON BEHALF OF THE RESIDENTS OF 102,104 AND 110 THE ESPLANADE

1. Purpose of Report

To seek Strategy and Policy Committee's approval to grant Right of Way access over Council land and Recreation Reserve to the residents of 102, 104 and 110 The Esplanade. Final Right of Way access will be subject to Department of Conservation approval.

2. Executive Summary

102,104 and 110 The Esplanade have applied to have their current informal vehicle access formalised as a Right of Way. The residents purchased their properties based on their belief that they had this access. The access is partly on fee simple and partly on Recreation Reserve land. The access is also used as a maintenance track by Parks and Gardens and a potential future access into the reserve. The area is zoned Open Space B in the District Plan.

Formalising of the Right of Way will not affect the function or existing purpose of the reserve in any way, nor will the rights of the public be affected in respect to access or use. Right of Way access is not likely to materially alter or permanently damaged the reserve as there has been existing use historically.

The applicants agreed to meet all costs in relation to formalising the Right of Way.

3. Recommendations

Officers recommend that the Strategy and Policy Committee:

- 1. Receive the information..*

2. *Agree to recommend to Council to allow the residents of 102, 104, 110 The Esplanade Right of Way access over Lots 120 – 124 DP1467 and Pt Sec4 Town DISTRICT (Option B of report).*
3. *Note:*
 - (a) *the requirement for public advertising under Section 48 (2) of the Reserves Act 1977 be waived in accordance with Section 48(3) of the Reserves Act 1977, as the reserve and the South Coast Management Plan are not likely to be materially altered or permanently damaged and the rights of the public are not likely to be permanently affected by the granting of the easement.*
 - (b) *approval of the Department of Conservation is required.*
 - (c) *the costs associated with preparing the Right of Way agreement is met by the applicants.*

4. Background

Parks and Gardens have received written requests from the property owners of 102, 104, 110 The Esplanade (Appendix 1 shown in orange) to legalise vehicle access over part of Buckley Road Reserve. Their current legal access is off The Esplanade.

The track in question is used as maintenance access by Parks and Gardens, informally by the above residents to access their properties and by the local community group for access to planting areas. The track was in situ when each of the current residents purchased their homes and appears in survey plans pre-1930's.

Historically the area was a failed subdivision. On failure of the subdivision the land was passed to Wellington City Council to be vested as Recreation Reserve. This area was *Gazetted* in 1989 (p4482) as Recreation Reserve and is covered by the South Coast Management Plan (2002).

Pt Sec4 Town DISTRICT remained as fee simple (Appendix 1 shown in red). This was presumably as a provision for access for these homes. Pt Sec4 Town DISTRICT is noted in the South Coast Management Plan as being held in fee simple with no plan to have this changed. The area is zoned Open Space B in the Operative District Plan.

Unfortunately given the topography of the area the track actually does not match Pt Sec4 Town DISTRICT's surveyed area. The track encroaches slightly into Recreation Reserve, Lots 120 – 124 DP1467 (Appendix 1 shown in yellow).

Because part of the land is Recreation Reserve, Parks and Gardens require the permission of the Strategy and Policy Committee to proceed with formalising

access with the Department of Conservation. Parks and Gardens have approached the Department of Conservation and were given an agreement in principle to this application. There is currently Right of Way access for two properties on either side of the entrance to the reserve (Appendix 1 shown in blue).

5. Discussion

Parks and Gardens have been approached by the property owners of 102, 104, 110 The Esplanade to legalise vehicle access over part of Buckley Road Reserve.

Right of Way access over reserve land is not common. Parks and Gardens, as a principle, do not normally support private vehicles using a reserve for access to a private dwelling.

However, Park and Gardens support this application due to:

- existing historic use by residents prior to reserve classification,
- confusing and contradictory historic paperwork regarding access,
- currently used as a maintenance track by Parks and Gardens,
- the topography of the area making their legal access off The Esplanade difficult,
- the topography of the area making the survey access impractical,
- granting access does not materially affect the public's enjoyment or use of the reserve, and,
- granting access does not materially alter the existing management plan.

Though Parks and Gardens approve this access the following conditions would be included in the Right of Way agreement:

- granting Right of Way access does not give the applicant the ability to subdivide using this Right of Way. This would be addressed through the Resource Consent process and may include betterment,
- the track will not be upgraded to the specifications of a road (curbing, channelling etc.) and will stay at the current standard for rural driveways. This is acceptable to Councils Transportation department. If an upgrade was to be undertaken it would be at the applicants expense and will require land owner permission,
- Council will not cover future maintenance costs associated with private use, maintenance to be managed through the Right of Way agreement,
- Right of Way access is not exclusive use and the residents cannot stop reserve users or pedestrian accessing over this area.

This offer does not set a precedent for vehicle access over reserve land for this or any other area.

5.1 Options

The following options have been considered as potential outcomes:

Option A – Status quos – no change to existing scenario

- This option does not address the existing concerns of the residents or Parks and Gardens.

Option B - Allow the residents of 102, 104, 110 The Esplanade Right of Way access over Lots 120 – 124 DP1467 and Pt Sec4 Town DISTRICT (subject to Department of Conservation approval).

- This option allows an affordable and practical solution to the residents. It also allows Parks and Gardens management control through the agreement and is therefore the preferred option.

Option C - The residents 102, 104, 110 The Esplanade removes the existing track and builds a new track in alignment with Pt Sec4 Town DISTRICT (fee simple) at their expense.

- Option C would be expensive for the residents. It would require significant earthworks and may not be technically possible. There would be significant disturbance to the reserve.

Option D - The residents of 102, 104, 110 The Esplanade resurvey the area to bring the existing track into Pt Sec4 Town DISTRICT (fee simple) at their expense.

- This option would be expensive for the residents and require parts of Lots 120 – 124 DP1467 to be reclassified. Staff would need to be involved in extensive reclassification and notifications processes. The issue would have its significance level raised.

Option E – Do not approve any access to the area.

- This option does not address the existing concerns of the residents or Parks and Gardens.

Officers recommend that Option B be implemented. This option will allow the residents of 102,104 and 110 Right of Way access to their properties which is a cost effective solution for both the applicants and council. It should be noted that the Department of Conservation have informally indicated that this request would be supported.

5.3 Significance Assessment

The granting of a Right of Way over Council and Recreation Reserve, in this case, is not considered to be significant under Council's Significance Policy. This is because it will not affect the existing use and purpose of reserve.

Staff are of the opinion that the content and recommendations in this report are consistent with the requirements of sections 77 through 82 of the Local

Government Act 2002 and that the decision-making requirements have been met.

5.4 Consultation and Engagement

Parks and Gardens are of the opinion that the requirement for public advertising/notification under Section 48 (2) of the Reserves Act 1977 be waived in accordance with Section 48(3) of the Reserves Act 1977. The Reserve and the Reserve Management Plan are not materially altered or permanently damaged by allowing this access and the rights of the public are not likely to be permanently affected by the granting of the easement. There is also existing use as a maintenance track.

5.5 Financial Considerations

Applicants are to cover all costs except staff time.

5.6 Climate Change Impacts and Considerations

Not applicable.

5.7 Long-Term Council Community Plan Considerations

Not applicable.

Contact Officer: *Johnnie Barrie, Reserves Planning Officer.*

Supporting Information

1) Strategic Fit / Strategic Outcome

The granting of Right of Way access does not link to any specific strategic outcome.

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

There is no financial impact as the applicants are responsible for all costs except staff time.

3) Treaty of Waitangi considerations

There are no known Treaty issues affecting this matter.

4) Decision-Making

This is not a significant decision. The report sets out a number of options and reflects the views and preferences of those with an interest in this matter.

5) Consultation

a) General Consultation

Consultation with the applicants only. The requirement for public advertising/notification under Section 48 (2) of the Reserves Act 1977 are recommended to be waived in accordance with Section 48(3) of the Reserves Act 1977.

b) Consultation with Maori

No consultation required.

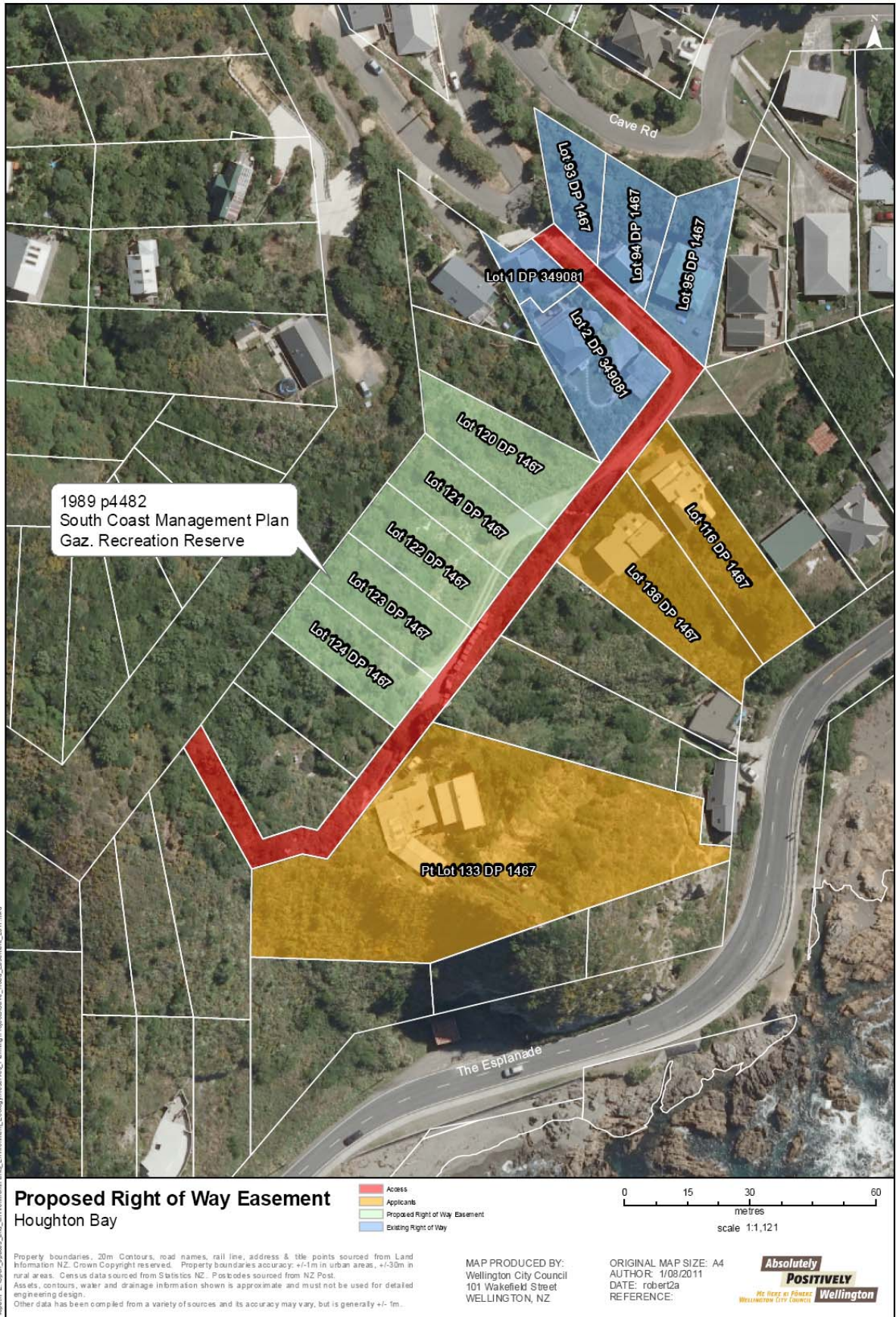
6) Legal Implications

The agreement will be subject to the provisions of the Reserves Act 1977. Legal advice will be sought in the preparation of the agreement.

7) Consistency with existing policy

Request not covered in existing policy or bylaws.

Appendix One: Right of Way Map



1989 p4482
South Coast Management Plan
Gaz. Recreation Reserve

Proposed Right of Way Easement Houghton Bay

- Access
- Applicants
- Proposed Right of Way Easement
- Existing Right of Way

0 15 30 60
metres
scale 1:1,121

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 sourced from Statistics NZ. Postcodes sourced from 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.

MAP PRODUCED BY:
Wellington City Council
101 Wakefield Street
WELLINGTON, NZ

ORIGINAL MAP SIZE: A4
AUTHOR: 1/08/2011
DATE: robert2a
REFERENCE:

Absolutely
POSITIVELY
We're so Positive
Wellington