

7 April 2011 Committee Report



STRATEGY AND POLICY
COMMITTEE
7 APRIL 2011

REPORT 7
(1215/52/IM)

**142 TIRANGI ROAD, LYALL BAY – VESTING OF
RESERVE LAND AS LEGAL ROAD UNDER SECTION
114 OF THE PUBLIC WORKS ACT 1981**

1. Purpose of Report

This report seeks Council approval to vest 7m² 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).

Refer to appendix 1 which shows the 7m² area of reserve land shown coloured yellow.

2. Executive Summary

Building consent was granted by the Council in 1998 for the construction of a new motel on Lyall Parade, Lyall Bay. The consent failed to indicate that authorisation was needed to cross a small area of Council owned recreation reserve.

The recreation reserve is a long thin strip of land situated between the Airport Motel and Lyall Parade and comprises the northern edge of the sand dunes which form a 20 metre wide barrier between buildings and Lyall Parade at this point. Most of the dunes are on 'unformed legal road',

To formalise the situation the Council proposed to grant a right of way easement over the reserve land. Public consultation took place in April 2004. Two objections were received. The Council did not uphold either objection, and in June 2004 passed a resolution to grant the easement in perpetuity, and applied to the Department of Conservation (DOC) for approval. However DOC only approved a five year easement which expires on 18 June 2011.

A permanent long term arrangement needs to be agreed regarding the motel's access.

Given the minimal area of reserve land that the easement is over, it is proposed that rather than granting a new perpetual easement, that the 7m² of reserve land be vested as legal road. The parties who previously objected to the granting of the easement will be given an opportunity to comment on this proposal as public consultation will be undertaken.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Recommend that Council :*
 - (a) *Agree to the vesting of 7m² 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) *Delegate to the Chief Executive the authority to conclude the vesting of the 7m² of recreation reserve between 142 Tirangi Road and Lyall Parade, as shown in Appendix 1, as Legal Road.*
3. *Note that the proposed vesting of the 7m² of Reserve land as Legal Road is conditional on :*
 - (a) *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*
 - (b) *The consent of the Minister of Conservation being obtained in accordance with section 114 of the Public Works Act 1981; and*
 - (c) *That if objections are received a further report will be presented to Council to decide whether to uphold them or not.*

4. Background

A building consent application was received by the Council in 1998 to build a motel on the corner of Tirangi Road, and Lyall Parade, Lyall Bay. The building consent was granted, but it failed to identify the small area of recreation reserve land that is situated between the motel and Lyall Parade. The Council as landowner was required to give approval to cross over that.

The recreation reserve and the unformed legal road in this area are mostly covered in sand dunes.

Objections received from local residents when the motel's driveway was first being formed through the sand dunes, resulted in officers recommending an easement be granted to the motel owner across the 7m² of reserve land.

This matter was considered by the Council in March 2004. It was agreed, subject to the outcome of public notification to grant an easement, and subsequent approval by DOC.

Public notification took place in April 2004 proposing an easement of no fixed term. Written objections were received from Kilbirnie Lyall Bay Rongotai

Progressive Association and Mrs Betty Weeber. The matter was further considered by the District Plan and Reserves Management Subcommittee in June 2004, with Mrs Weeber making an oral submission in support of her objection, but not raising any further issues. The objections were not upheld and the resolution to grant the easement was passed.

An application was made to DOC to grant the easement. DOC did not uphold the objections, but only approved the easement for five years in consideration of the Lyall Bay Integration Plan (LBIP). Both objectors were notified that a five year easement was granted, and that it was expected that the LBIP once finalised would provide a long term solution. The easement was granted, but was not registered until 2006, hence it has an expiry date of 18 June 2011.

When the LBIP did not proceed officers contacted DOC to discuss the possibility of making the easement perpetual. DOC were not opposed to this proposal in principal but as a perpetual easement would be substantially different to a five year easement, they wanted further consultation with the two objectors before it would give their final approval.

There are no plans to proceed with the LBIP and officers believe that the best way to resolve the situation is rather than pursuing a perpetual easement, to vest the 7m² of reserve land as Legal Road. The remaining recreation reserve land on the motel's boundary would remain to prevent further access over the dunes.

The two objectors have been consulted about the new proposal. Their responses are outlined in Discussion 5 (1).

5. Discussion

The section of recreation reserve between Tirangi Road and Kingsford Smith Street was established as an historic planning tool to prevent access from Lyall Parade. The whole area including the road reserves is a backdune formed naturally over time dominated by marram grass. It is of limited ecological value due to separation by Lyall Parade from the foredunes. Its main values are landscape and amenity providing a backdrop to Lyall Parade. Due to the narrowness of the recreation reserve it has low if any use for recreational purposes.

It is unlikely that vesting the small area of land will impact negatively on any reserve users.

5.1 Consultation and Engagement

Officers met on site in April 2010 with the two parties who had objected to the original easement, Mrs Weeber and a representative of Kilbirnie Lyall Bay Rongotai Progressive Association.

At the meeting officers marked out the exact area of the easement. This was to ensure that all parties understood what was reserve land, and what was road reserve.

Appendix 2 is a photo of the area showing the reserve land that the easement is over in relation to the motel's driveway.

Following the meeting Mrs Weeber wrote to Council and confirmed her previous objection against any easement, or reserve revocation, and the representative for Kilbirnie Lyall Bay Rongotai Progressive Association, emailed confirming that their association supported a temporary extension of the easement, i.e. for another five years.

Appendix 3 contains a copy of Mrs Weeber's letter of 2 June 2010, and copy of her original objection made in 2004.

Appendix 4 contains a copy of the 19 May 2010 email from Kilbirnie Lyall Bay Rongotai Progressive Association, and their email of 24 May 2004 which lists the grounds for their original objection.

DOC have been contacted, and the proposal to vest the 7m² of land as legal road presented to them. Their response is that while the view of the delegate of the Minister of Conservation had not been sought, it was thought that the proposal would be seen as having merit when application was made.

5.2 Financial Considerations

Costs related to the proposed vesting as legal road would be shared by the motel owner and the Council. Given the circumstances, the share that the motel will be responsible for is proposed to be capped at \$1,500 excl GST.

The costs incurred by the Council would come out of Parks and Gardens budget.

No further survey costs are expected as the 7m² of land was defined when the original easement was created.

5.3 Climate Change Impacts and Considerations

There are no significant climate change impacts or considerations to be considered.

5.4 Long-Term Council Community Plan Considerations

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

5.5 Next Steps

Should the proposal to vest the 7m² of land as legal road under section 114 of the PWA be approved, then the next steps would be –

- Consult with Te Runanga o Toa Rangatira Inc (Port Nicholson Block Settlement Trust have already indicated support for the proposal)
- Publicly notify the proposal

- If objections are received, a further report to Council will be presented along with hearings (if required) to decide whether they should be upheld or not¹
- If objections are not upheld the Council will require final approval from the Minister of Conservation.
- Apply to Land Information New Zealand to vest the land as legal road.

6. Conclusion

It is recommended that the Strategy and Policy Committee recommend to Council that the 7m² of recreation reserve land situated between 142 Tirangi Road, Lyall Bay, and Lyall Parade, be vested as legal road under section 114 PWA, to provide a long term solution to the motel's access.

Contact Officers : *Paul Davidson, Property Advisor, Property Projects and Mike Oates, Manager Open Space and Rec Planning*

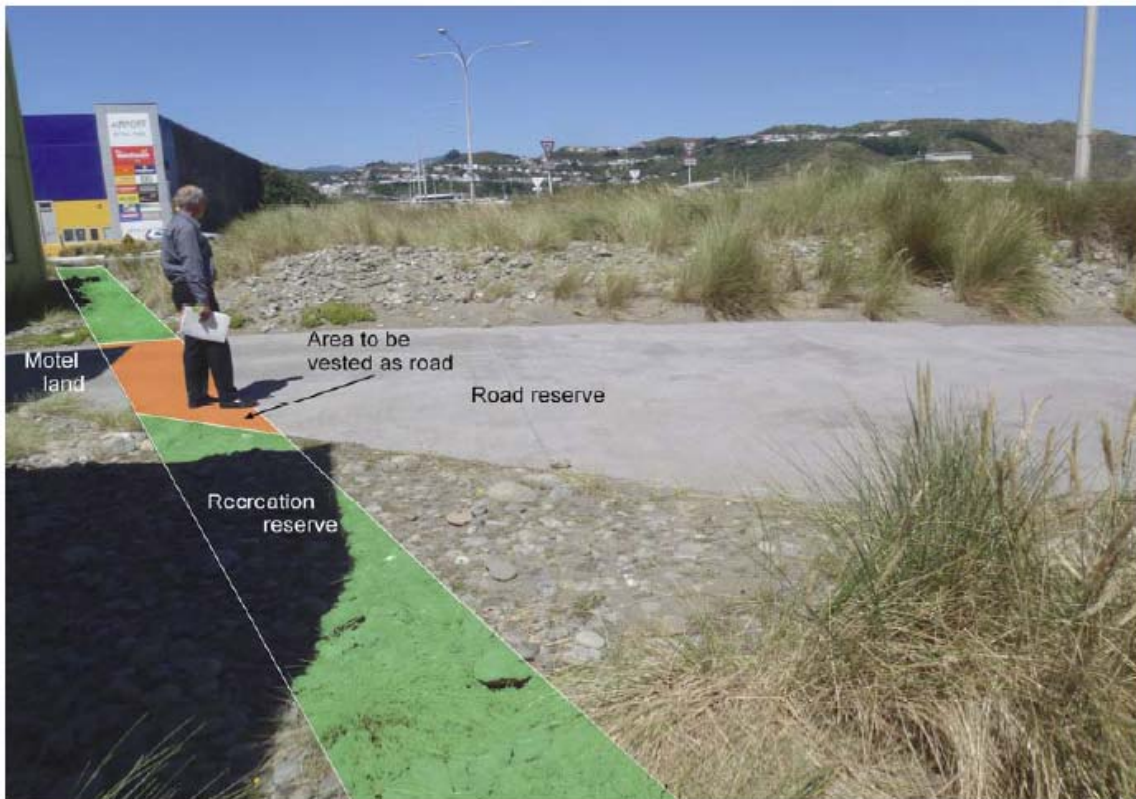
¹ If further objections are received, and upheld by Council, alternative action to deal with the motels access situation would need to be explored.

Supporting Information
<p>1) Strategic Fit / Strategic Outcome <i>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.</i></p>
<p>2) LTCCP/Annual Plan reference and long term financial impact <i>The proposal does not result in any LTCCP or long term financial impact.</i></p>
<p>3) Treaty of Waitangi considerations <i>Lyall Bay is noted as being of medium significance in the heritage listing of the District Plan.</i></p>
<p>4) Decision-Making <i>The report reflects the views and preferences of those with an interest in this matter who have been consulted with.</i></p>
<p>5) Consultation a) General Consultation <i>All consultation required to date has been carried out as described in the report.</i></p> <p>b) Consultation with Maori <i>The Port Nicholson Block Settlement Trust have been consulted. They support the proposal outlined in this report.</i></p> <p><i>Te Runanga o Toa Rangatira Inc have yet to be consulted.</i></p>
<p>6) Legal Implications <i>The Council's lawyers have been consulted during the development of this report.</i></p>
<p>7) Consistency with existing policy <i>This report relates to a matter which is a one off issue hence not part of any policy.</i></p>

Appendix 1



Appendix 2



Appendix 3

Mrs M.B. Weeber
186 Couitts Street
Rongotai
Wellington 6022
2 June 2010



Re: Lyall Parade Recreation Reserve Easement

Dear Paul Davidson,

Thank you for organising the site visit, and correspondence on the issue of the easement over the Recreation Reserve on Lyall Parade. I believe that there should be no long term easement for the passage of motor vehicles over this recreation reserve to gain access into the Motel. And there definitely should not be any removal of the recreation reserves status of this land. My previous objection to the present easement still stands. This letter should be read in conjunction with my previous objection (attached).

The small shape and size of the easement land (as discussed in your letter of the 30 April 2010) is not the issue. Reserve strips of this nature are normally small and narrow. This recreation reserve area though small in area makes a line or positive break between the industrial area and recreational areas of Lyall Parade and the beach area. The creation of the vehicle easement to the motels has made it impossible for the council and local community to undertake any amenity improvements of this area.

Its sets a precedent of other future easements being granted along the Lyall Parade reserve strips through to adjoining properties.

The landscape treatment of the vehicular easement is not in keeping with the surrounding area. It appears larger and wider than just one lane of traffic. Cars park on the side of the paved easement strip at night. Native plants have not been used in the planting and the rounded river boulders are not in keeping with the natural coastal landscape of the area. The Motel owners are not removing rubbish or maintaining it in a satisfactory manner.

There have been a numbers of errors of judgement in the past by the council and the motel owners regarding this easement and building. I do not wish the council to approve of any proposal to extend the life of this easement or remove the recreation reserve status.

Yours sincerely

A handwritten signature in cursive script, appearing to read "M B Weeber".

Mrs M. B. Weeber

CC: Stephen Moore, Leonie Gill, Ray Ahipene-Mercer, Rob Goulden.

SUBMISSION ON:

The easement to the owners of 138 Tirangi Road, Lyall Bay across the recreation reserve off Lyall Bay Parade (described as lot 62 DP 21360, Certificate of Title WN58B/395)

This submission is in **objection** to the easement and any subsequent easements of this type on this title.

Introduction

The Reserves Act 1977 has three main functions. These are:

- To provide for the preservation and management, for the benefit and enjoyment of the public, areas of New Zealand with some special feature or value. The reserves around the road reserve and foreshore of Lyall Bay are special areas if not rather neglected.
- To ensure the preservation of landscapes and other features both rare and commonplace. This recreation reserve area though small in area makes a line or positive break between what is a rather unattractive industrial area (now called the Rongotai suburban centre) and Lyall Parade and the beach area. The creation of this reserve is clear, to stop the industrial area leaking into the Lyall Bay and the Parade area both physically and visually.
- To ensure as far as practicable, the preservation of access for the public to coastline and to encourage the protection and preservation of the natural character of these areas. Though this is a sadly neglected area of recreation reserve it should be able to help define the natural character of Lyall Bay and the surrounding coastal environment.

I have been asking for years for these areas of Lyall Parade to be used in a more positive way for picnicing and beach recreational uses.

Reserves Act 1977

This easement is being sort on a recreation reserve. Having read section 17 of the Reserves Act 1977 I believe that this reserve meets this classification as its purpose is for the recreation and physical welfare and enjoyment of the public and the protection of the natural environment. The emphasis is on the retention of open spaces. While allowing free public access it has also allowed misuse of this area and the surrounding road reserve as a dumping area. This reserve has never been administered appropriately to allow for the reserve meet section 17 (2) c "*Those qualities of the reserve which contribute to the pleasantness, harmony and cohesion of the natural environment and to the better use and enjoyment of the reserve shall be conserved*"

I believe that this easement will further reduce the qualities of the reserve in question and further decrease the pleasantness, harmony and cohesion of these small strips of land. This easement will break up the recreation reserve and road reserve, damage the environment and make the area more hazardous for pedestrians and users of the reserve and surrounding area.

Past history of this Lyall Parade reserves

I have written numerous letters in relation to this area and in particular to this site and accessway. I attach the letters relevant to this to this submission. However I have sent the council other numerous letters and submissions which have included my concerns and proposal for upgrading these small but important and vital reserves of Lyall Bay for the past thirty years.

Past history of this easement and development site

In my opinion the council has made an error in judgement by granting the vehicle access permit over the recreation reserve in 1999. This vehicle access approval from Lyall Parade in my opinion is illegal due to the Recreation Reserve that it must cross. Even though this is only approximately 7 square metres Wellington City Council should have been aware of this and not granted this vehicle access permit.

A further error of council judgement was made in the granting of a building consent using the illegal (in my opinion) vehicle access from Lyall Parade, when legal vehicle access could have been designed and constructed off Tirangi Road. The council should have double checked all dealings with this developer on this site when it queried the building consent in regard to compliance to the District Plan as the development initially appeared residential in nature. It is clear to me that this developer is unclear of due process, district plans and statutes such as the reserves act and the council should have made the requirements of these acts and statutes apparent to him right from the initial vehicle access permit.

In 2003 Wellington City Council came and talked to the progressive association as these errors in council judgement in granting vehicle access and building consent with access off Lyall Parade had not been recognised until the buildings was nearly completed. The Council and the developer made a case of urgency so that the motels could open as soon possible. However at this time only a verbal recognition of the proposal for vehicle access off Lyall Parade was made and no formal approval could be granted due to the reserves act. What was suggested was this land of 7 square metres be added to adjoining reserves and the whole area between Tirangi Road and Kingsford Smith Street as well as the other two pieces of reserve be 'landscaped' with appropriate planting and other facilities such as seating, picnic tables, paving and even the possibility of a play area. Nothing in this area seems to have been done to this area or the Motels. The road reserve and area directly around the Motels still remains in an appalling state.

The developer has got vehicle access off Tirangi Road and also says in public meetings he owns the adjoining land. This development should be accessed off Tirangi Road rather than gaining an easement over a recreation reserve off Lyall Parade. The developer has had enough time over the last years to rectify this access issue in his own land off Tirangi Road and should not have access off Lyall Parade.

Precedent of this easement on similar Recreation Reserve lots in this area

The provision of this easement will form a precedent for similar such easements to appear along this and similar recreation reserve strips along Lyall Parade. This should not happen due to all lots within the Rongotai suburban centre having alternative access off either their own private road of Cochrane Street and the Public Roads of Tirangi Road or Kingsford Street.

I also note that the shuttle taxis and trailers are now being parked up on Road and Recreation Reserve on the corner of Kingsford Smith Street and Lyall Parade where there is no vehicle crossing. This is making a poorly maintained road and recreation reserve look worse, breaking up the kerb area and forming deep ruts in the once vegetative area. The council should be acting on this illegal parking with parking infringement notices.

Summary

This easement is due errors in judgement in my opinion by both the developer and the council.

This submission is in objection to this easement and I wish to be heard

Betty Weeber

Appendix 4

Paul Davidson

From: MOORE STEPHEN, MR [D1023319@nzdf.mil.nz]
Sent: Wednesday, 19 May 2010 4:10 p.m.
To: Paul Davidson
Subject: RE: Unclassified: Airport Motel

Hi,

As the last extension was Five years - we thought that was reasonable as it would tie into WCC planning cycles for the area.

Cheers

From: Paul Davidson [mailto:Paul.Davidson@wcc.govt.nz]
Sent: Wednesday, 19 May 2010 3:07 p.m.
To: MOORE STEPHEN, MR
Subject: RE: Unclassified: Airport Motel

Hi Stephen,
Thank you for your comments.

Could you clarify what length of timeframe you are referring to, when you say 'temporary'?

I look forward to your further response.

Regards

Paul Davidson
Property Advisor - Property Projects
Property Services, Wellington City Council

101 Wakefield St
PO Box 2199, Wellington

M 021 227-8139
P (04) 803-8139
F (04) 801-3002

<http://wellington.govt.nz>

From: MOORE STEPHEN, MR [mailto:D1023319@nzdf.mil.nz]
Sent: Wednesday, May 19, 2010 1:21 PM
To: Paul Davidson
Subject: Unclassified: Airport Motel

Hi,

For your information at our Residents Meeting, the majority of attendee's support and "temporary" extension of the crossing.

Ideally we would like this area beautified with tree plantings etc..

Regards
Stephen Moore

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From: Stephen Moore
To: Hilary.Harrington@wcc.govt.nz
Date: Monday, 24 May 2004 1:38:51 p.m.
Subject: Submission re Lyall Motel Bay Motel

To: Hilary Harrington, Open Space Planner WCC Development, P O Box 2199 Wellington.

The Kilbirnie Lyall Bay Rongotai Progressive Association Inc. maintains the same views as it held and expressed in an email post-consultation submission dated 4 July 2003, to the then Council Officer Stephen Lamb.

I re-iterate the view as follows:

The Kilbirnie Lyall Bay Rongotai Progressive Association Inc. opposes the proposal to legitimise the accessway to the motel units (through the reserve strip) being allowed because Council have not included any of the conditions that we demanded in that submission.

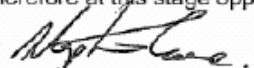
Our conditions are as follows:

1. That the access be onto Tirangi Road rather than onto Lyall Bay Parade itself (as per the discussion with Stephen Lamb at the meeting).
2. That an appropriate traffic safety audit be carried out for the surrounding roads.
3. That in future, the Association wishes to see a more totally integrated approach to ongoing development and enhancement of Lyall Bay as a whole (perhaps combined with the Lyall Bay/Rongotai Commercial Centre Enhancement Programme), rather than ad hoc developments with no coordination overall.
4. That further dialogue and consultation (and if need be, negotiation) take place between the Association and Council (before Council applies for the resource consent) and if agreement on our conditions are not reached at that stage, the Association reserves the right to object to the proposal.

N.B.: As regards, part 4 above, Stephen Rainbow did telephone our former president Peter Benson more recently (about a week before gazetting the application for a resource consent) - left a voicemail message. Peter Benson phoned back leaving a voice-mail message, but there was no further communication.

Since submitting the original submission, we realise that there may be future plans afoot for the possible opening of direct access to Lyall Bay parade for buildings fronted by the existing road reserve and therefore no decision should be made regarding this application until these other overarching decisions for Lyall Parade development have been made.

Because Council appears to have not listened to any of our argument, we are therefore at this stage opposing this application.


Regards,
Stephen Moore (President)

PS Hard copy to be delivered to Council reception by COB.