
REPORT 2
(1215/13/IM)

ACQUISITION OF LAND FOR ROAD – 495A OHARIU VALLEY ROAD

1. Purpose of Report

To obtain the Makara / Ohariu Community Board's endorsement and feedback (if any) on officer's recommendation to Council that it acquires 832 square metres of land at 495A Ohariu Valley Road pursuant to Section 16 of the Public Works Act 1981, and vest as road.

This land is almost entirely occupied by Ohariu Valley Road and has been since at least 1903. Officer's recommendation to Council is to acquire and vest this land as legal road in order to legalise this historic anomaly.

This matter is to be considered by the Strategy and Policy Committee in its meeting of 9 February 2012 (see report at appendix 1).

2. Recommendations

Officers recommended that the Makara/Ohariu Community Board:

- 1. Receive the information.*
- 2. Endorse the recommendations contained in the report to be considered by the Strategy and Policy Committee in the meeting of Thursday 9 February 2012, and provide feedback to be included in the report if necessary.*

3. Background

A small portion of Ohariu Valley Road occupies Deeds land and has done so since, at least, 1903. This portion of land adjoins 495 Ohariu Valley Road and measures 832 square metres.

As set out below, the land is essentially abandoned. Therefore, Officers recommend that Council legalises this situation by compulsory acquisition pursuant to the Public Works Act 1981.

Deeds were the main original record of property ownership before the land titles system. Very little land still remains in the deeds system. The subject land is residue held in Deeds Index 18/364, Deeds index 24/505 and Deeds Index 3/772 following subdivision over the years, and has never had a current land title.

The last recorded owner of the land was Mrs Rosina Louisa Majendie. Mrs Rosina Majendie died in 1902.

Investigations to date show that the marriage between Mrs Rosina Majendie and her husband Mr Frank Majendie was childless; however Mr Frank Majendie remarried and had two children, both of whom are deceased.

Two of Mr Frank Mejendie's grandchildren have been in contact with Council, and were advised of Council's intention to acquire the land. At this time they were invited to establish if they have any claim of ownership by virtue of being descendants of Mr Frank Majendie. The grandchildren, Russell and Graeme Majendie, have made no indication to Council that they will be pursuing a claim to the land.

4. Discussion

It is usual practice, as well as a legal requirement, for any acquiring authority to negotiate land acquisitions with the registered owner of the affected property.

In the case of deceased estates, descendants must first have their ownership established by the Court. Should any descendant have their ownership established by the Court, Council would then enter into negotiations with them.

However, in this case, there is no readily identifiable land owner (or descendant) with whom to negotiate.

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 Council has a better claim to ownership of this land than any descendent of the original owner.

However, the best legal mechanism available to Council to acquire the land in this circumstance is to compulsorily acquire the land under the Public Works Act 1981 (PWA).

Under this PWA process the Council publicly notifies 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 request the Governor General declares, by way of Proclamation, the land taken for road.

The process for compulsory acquisition under the PWA is clearly defined and must be strictly adhered to.

Council officers have identified three options are available to Council, which are to legally acquire the land, realign the road or leave the situation as it is

currently. Further information on these options is contained in the attached report. Council officers recommend that the land be legally acquired.

5. Conclusion

Due to the land being effectively abandoned, Council officers consider that compulsory acquisition of the land pursuant to the Public Works Act 1981, to vest as legal road, is the best option to legalise the current situation, and intend to recommend this to the Council's Strategy and Policy Committee.

Council officers are seeking support from the Makara / Ohariu Community Board, and will include feedback as necessary.

Contact Officer: *Jon Moser, Property Advisor - Property Projects,
Wellington City Council*

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ACQUISITION OF LAND FOR ROAD – 495A OHARIU VALLEY ROAD

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 issued for adjoining land many years ago. The last dealing for the land was in the Deeds Index¹ and refers to ownership of the land in the name of Rosina Louisa Majendie, who died in 1902.

We 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. *Receives the information.*
2. *Recommends 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.*

¹ "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>

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- (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.*

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' seeking successors of Mrs Rosina Majende to come forward. This resulted in responses from two of Mr Frank Majendie's grandchildren, Russell and Graeme Majendie. They 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 and Graeme were advised of the situation with the land, of Council's intention to acquire the land, and they were invited to establish if they have any claim of ownership by virtue of being descendants of Frank Majendie. Russell advised he will not be pursuing any claim, and Graeme did not respond 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 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 properties to come forward, none have advised of any claim to either parcel of 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

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believe Council has a better claim to ownership of this land than any descendent 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. 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 descendents 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 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. **Realign 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. 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. 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 Roading Operations CAPEX Budget RTCX 101.

As there is no current landowner per say, 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

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compulsory acquisition process to take the land at 495A Ohariu Valley Road to vest as legal road.

This acquisition will legalise the current situation, which is that the formed road currently runs over land that 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

Nicola Hine, 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. 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.

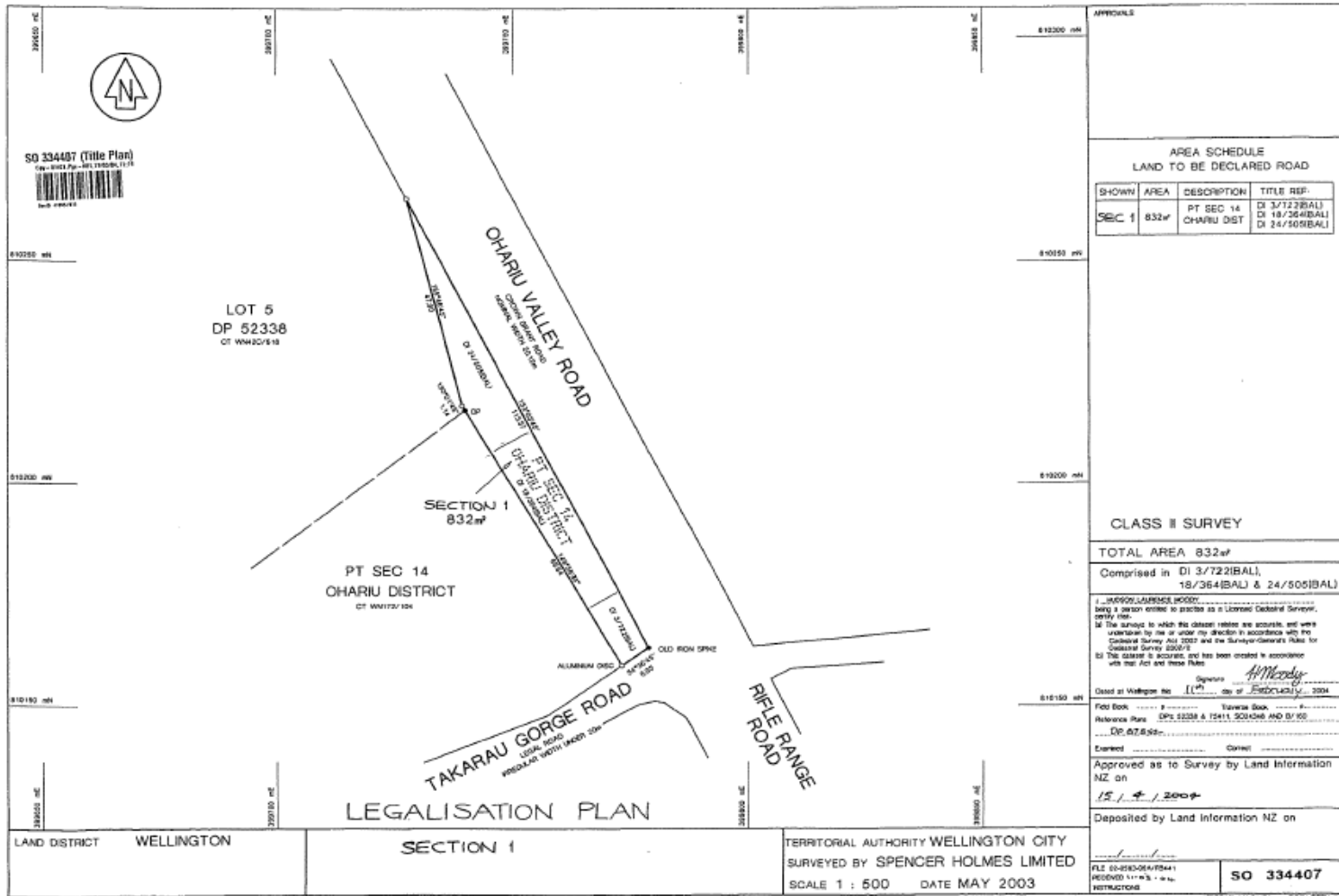
Absolutely
POSITIVELY
ME HEKE KI PŌHĀRE
WELLINGTON CITY COUNCIL **Wellington**



Scale 1:1500

Appendix B
Survey Office plan

APPENDIX 1



APPROVALS

AREA SCHEDULE
LAND TO BE DECLARED ROAD

SHOWN	AREA	DESCRIPTION	TITLE REF.
SEC 1	832m ²	PT SEC 14 OHARIU DIST	DI 3/722(BAL) DI 18/364(BAL) DI 24/505(BAL)

CLASS II SURVEY

TOTAL AREA 832m²
Comprised in DI 3/722(BAL),
18/364(BAL) & 24/505(BAL)

I, SPENCER HOLMES, being a person entitled to practice as a Licensed Deceased Surveyor, certify that the subject to which this dataset relates are accurate and were undertaken by me or under my direction in accordance with the Cadastral Survey Act 2002 and the Survey-General's Rules for Cadastral Survey 2007/8. If the dataset is accurate and has been created in accordance with that Act and these Rules.

Signature: *Spencer Holmes*
Class of Work: [] of [] of [] 2004

Field Book: [] Traverse Book: []
Reference Plans: DP 52338 & 15411, 500/146 AND B/100
Dp 07830

Examined: [] Correct: []

Approved as to Survey by Land Information NZ on
15.1.2004

Deposited by Land Information NZ on

FILE 60-820-064/0541
RECEIVED 11/1/03
INSTRUCTIONS

SO 334407

APPORAL LM 01/04 DCB1 FORM 011