
REPORT 4

**APPROVAL FOR GRANTING EASEMENTS OVER
RESERVE LAND AT 56 ONSLOW ROAD, KHANDALLAH**

1. Purpose of report

To seek the Committee's approval to grant easements for access and drainage over parts of Reserve land at 56 Onslow Road, to the owner of 62 Onslow Road, Khandallah. Please refer to Appendix One for the survey plan showing the Easement areas as A, B and D.

2. Executive summary

When the owner of 62 Onslow Road, Khandallah prepared a two lot subdivision, their surveyor recently discovered that part of the driveway and storm water was situated on the adjoining Council Reserve at 56 Onslow Road. The Reserve land was initially acquired by Council for Street Widening purposes in 1954 and then later Classified under the Reserves Act 1977 in August 1995.

This report recommends the Committee approves easements over parts of the land at 56 Onslow Road, Khandallah to the owner of 62 Onslow Road, Khandallah. This will remedy a historic situation that existed long before the land at 56 Onslow Road was declared as Recreation Reserve.

The land at 56 Onslow Road is fee simple Recreation Reserve and is subject to the Reserves Act 1977.

As these easements seek to regularise an existing drive and stormwater constructed prior to the Reserve Classification it will not materially alter or damage the Reserve land. In accordance with Section 48(3) of the Reserves Act 1977, a request is made to waive the requirement for public notification.

3. Recommendations

Officers recommend that the Environment Committee:

- 1. Receive the information.*
- 2. Approve both a right of way easement and storm water easement in perpetuity, for a one off payment, over parts of Lot 69 DP 8007 CT WN643/46 pursuant Section 48 of the Reserves Act 1977.*
- 3. Waive the requirement for public notification under Section 48 (2) of the Reserves Act 1977 in accordance with Section 48(3) of the Reserves Act 1977, as the Town Belt is 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.*

4. *Note that the easements are also subject to resource consent and Parks, Sport and Recreation have already given approval in principle due to the particular circumstances in this case.*
5. *Note that any approval to grant an easement is conditional on payment of betterment and that all the costs associated with preparing and implementing the easement will be met by the owner of 62 Onslow Road, Khandallah.*

4. Background

The owner of 62 Onslow Road, Khandallah (Owner) engaged a surveyor to do a two lot subdivision application to Council. The survey showed that part of the existing driveway (12m²) encroached onto adjoining Reserve land at 56 Onslow Road and there was a requirement for a turning area that would encroach onto the Reserve by 3m². There is also an existing storm water drain (since late 1950s) travelling some 5 metres into the centre and eastern part of the Reserve and connecting into the Council mains (this is marked as Area D on the plan in Appendix One).

The Owner then applied to obtain easements over parts of the Council owned land at 56 Onslow Road, Khandallah (Easement Land) to legalise existing storm water pipes and part vehicle access to 62 Onslow Road, Khandallah (Owner's Land).

The Easement Land was originally acquired by Council in 1954 for street widening purposes. Whilst it was held for this purpose an under ground storm water pipe (1958) and driveway (mid 1980s) were built serving 62 Onslow Road. Appropriate building consents were obtained from the Council at that time. It was not until 9 August 1995 that the Easement Land was changed from its street widening purpose to Recreation Reserve.

The Owner will be responsible for all costs associated with construction upon, maintaining and repairing the Easement Land.

The Reserve at 56 Onslow Road is known as Smith's Gully and is a Reserve under the Reserves Act 1977. The land is zoned Open Space B under the District Plan.

In accordance with Section 48 of the Reserves Act 1977, the Environment Committee has delegated authority to grant landowner approval for easements through Reserve.

5. Discussion

The easements for which approval is requested will legalise a small part of the existing driveway, the existing stormwater drain and provide a new small turning area. The driveway was constructed in the mid 1980s with associated retaining and vehicle barrier and the stormwater would have been installed when the house was built circa 1958. The Easement Land was held for street

widening purposes at the time and the drive and storm water developments were consistent and permissible with that purpose.

5.1 Impacts on the Open Space Values of the Proposed Easement

The existing stormwater drain is underground and connects into a Council main running through the Reserve (refer to Area D on the plan in Appendix One). The right of way for the existing drive encroachment and proposed turning area are shown as A and B on the same plan in Appendix One.

A small area of the driveway straddles the Reserve at its northern side where the land rises steeply toward the road. The main flat and usable area of the Reserve is on its Southern side where it's accessible from Onslow Road (see Photos in Appendix Two). The proposed easements would have no material impact on recreational users of the Reserve.

There is no practical alternative access to the Owner's Land as immediately to the left of the existing driveway is a retaining wall supporting the formed road carriageway above.

The existing driveway is located mainly on legal road land and was built in the mid 1980s when the Easement Land was held for street widening. Parks, Sport & Recreation has been consulted by the Owner in this matter and agree in principle to the easements subject to Committee approval.

Any maintenance works are to be strictly controlled by the wording of the easement.

5.2 Consultation and Engagement

The land at 56 Onslow Road is fee simple Recreation Reserve and is subject to the requirements of the Reserves Act 1977. Public consultation and the granting of easements *are in terms of Section 48 of the Reserves Act.*

As this easement will not materially alter the Reserve land, nor affect the recreational qualities of the land a request is made to waive the requirement for public notification. This is in accordance with Section 48(3) of the Reserves Act.

The Council has previously agreed to waive public notification under Section 48(3) where the long term impacts are immaterial.

Consultation will be carried out as part of the Resource Consent process if required. The Port Nicholson Block Settlement Trust has been advised of the easement application.

5.3 Process

If the Committee agrees with the Report's recommendation the following steps will be taken in the process:

- The owner will finalise resource consent for a two lot subdivision of their land;
- Survey, legal cost and valuation of the easement (at Owner's cost).

- Betterment assessed by a registered valuer.
- Easement document finalised and registered on the titles.

5.4 Financial Considerations

All costs associated with the preparation and valuation of this easement will be borne by the Owner. The Owner will be responsible for all costs associated with the easement areas and pay a one off betterment payment.

5.5 Climate change impacts and considerations

There are no climate change impacts.

5.6 Long-term plan considerations

There are no long term plan impacts.

6. Conclusion

These easements seek to legalise an existing access driveway and underground storm water drain which have historic regulatory consent. These were built when the Easement Land was held by Council for street widening purposes.

As the easements will not materially change or damage the Reserve and the public rights to the Reserve are not affected it is recommended that the easements be approved and the public consultation requirement be waived, as permitted under section 48 of the Reserves Act 1977.

Contact Officer: *John Vriens, Senior Property Advisor*

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

Agreement to the easement will ensure that Council is meeting it's obligations under the Reserves Act 1977.

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

The project is fully funded by the Owner applying for the easements.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi considerations.

4) Decision-making

This is not a significant decision. The proposed easements are consistent with the Reserves Act 1977.

5) Consultation

a) General consultation

As the Reserve is 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. General consultation can be waived by the Committee under section 48 (3) of the Reserves Act 1977.

b) Consultation with Maori

Local iwi will be consulted with through the resource consent process if there is a site of significance to Maori nearby. Local iwi have been advised of the easement application.

6) Legal implications

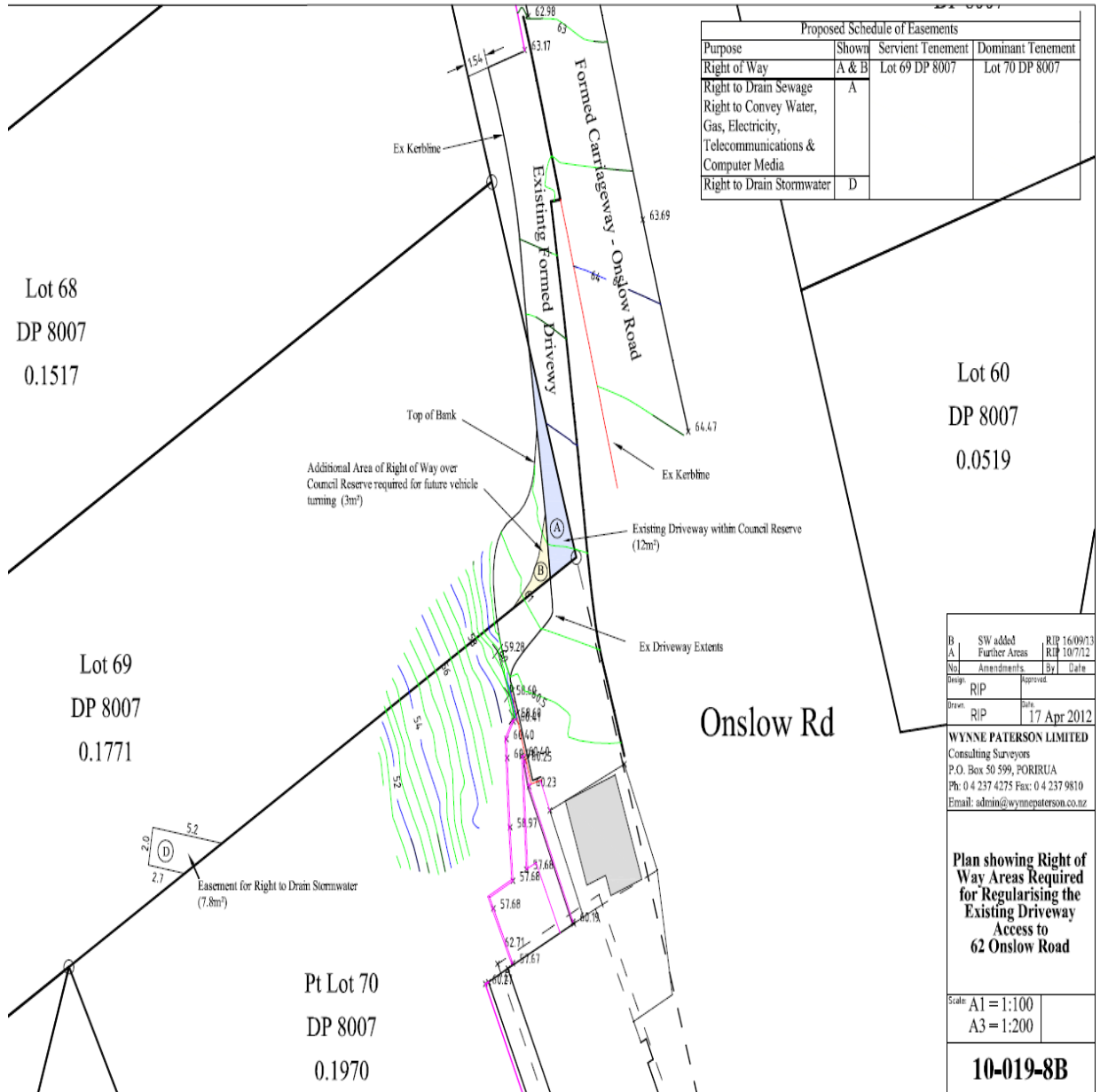
Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

The easements are consistent with the Reserves Act 1977.

APPENDIX ONE

Location Plan of proposed Easements over 56 Onslow Road, Khandallah to number 62 Onslow Road.



APPENDIX TWO

Photo of driveway to 62 Onslow Road partly straddling adjoining Reserve land at 56 Onslow Road.



APPENDIX TWO

Flat area of the Reserve (south side) looking up toward 62 Onslow Road (to the right with grey roof and partly obscured by vegetation).

