

QLDC Council
17 August 2017

Report for Agenda Item: 15

Department: Property & Infrastructure

Right of Way Easement – 47 Howards Drive, Lake Hayes Estate

Purpose

The purpose of this report is to consider an application for a Right of Way Easement from Richard and Charmaine Denney, the owners of 47 Howards Drive, Lake Hayes Estate.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Grant** a Right of Way Easement over Council administered Recreation Reserve (Lot 3 DP 447156) in favour of the proprietors of 47 Howards Drive, Lake Hayes Estate (Lot 1 DP 447156) subject to the following conditions;
 - a. A Council inspector is to be present when the excavation works are undertaken to ensure Council infrastructure is not damaged or disturbed, and
 - b. In the event of damage being caused, Council infrastructure it is to be repaired by Council's maintenance contractor, at the applicant's cost, and to the satisfaction of Council engineers, and
 - c. Before any works are undertaken, a valuation is prepared, at the expense of the applicant, to determine the market value of the land. Such valuation to be accepted by both parties.
3. **Delegate** authority to approve final terms and conditions, and execution authority to the General Manager – Property and Infrastructure; and
4. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of an easement over Lot 3 DP 447156 in favour of proposed Lot 1 DP 447156.

Prepared by:



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4/08/2017

Reviewed and Authorised by:



Myles Lind
Acting General Manager,
Property and Infrastructure
5/08/2017

Background

- 1 The current owners of 47 Howards Drive, Lake Hayes Estate (herein referred to as “the applicants”) purchased their property in 2016 with a pre-existing dwelling in place. The property is bordered on its western and southern boundary by Council administered recreation reserve legally described as Lot 3 DP 447156.
- 2 The access drive to the carport of the applicant’s dwelling runs along the southern boundary between the house and a retaining wall located on the boundary of the adjacent reserve. The gap between the corner of the dwelling and the retaining wall is 2.5m and is very narrow for vehicle access.
- 3 The applicants are seeking a Right of Way [‘ROW’] easement in order to reposition the existing retaining wall to widen the gap between the dwelling and the wall and improve manoeuvrability in and out of the drive.
- 4 Originally proposed by the applicants was a small triangular area of land measuring 2.5m wide at the street, and 10m in length along the shared boundary with a total area of 12.5m².

Comment

- 5 Council infrastructure, specifically a water pump for a nearby waterfall, stormwater junction and an associated manhole, is located within the reserve adjacent to the proposed ROW.
- 6 Council’s 3-Waters Contract Manager has reviewed the proposal and it is their preference to set the entire retaining wall back by 1m instead of the ROW measuring 2.5m at the street. The applicants have confirmed acceptance of this amendment. Plans of the two options are shown on Attachment A.
- 7 Council’s Contract Manager also notes that care will need to be taken when excavating close to the infrastructure and conditions of approval should include a requirement for any damage caused to be fixed by Council’s maintenance contractor, at the applicant’s cost, and, further, that a Council inspector be required to be present when the excavation works are undertaken to ensure Council infrastructure is not disturbed.
- 8 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a reserve. This consent is now delegated to Council and must be granted prior to the easement being lodged with LINZ. An intention to grant the easement has been publicly notified with no comments received by the public.
- 9 In accordance with Item 3 of QLDC’s Easement Policy 2008, an Easement Fee for Right of Way Easements is to be determined by an individual valuation which will determine the market value of the land.
- 10 Should QLDC wish to grant the ROW, this report recommends approval is granted subject to the following conditions;

- a. A Council inspector is to be present when the excavation works are undertaken to ensure Council infrastructure is not damaged or disturbed, and
- b. In the event of damage being caused, Council infrastructure it is to be repaired by Council's maintenance contractor, at the applicant's cost, and to the satisfaction of Council engineers, and
- c. Before any works are undertaken, a valuation is prepared, at the expense of the applicant, to determine the market value of the land. Such valuation to be accepted by both parties.

Options

11 Option 1 Grant a Right of Way easement subject to the conditions outlined above.

Advantages:

- 12 The applicants can improve the access to their property along the driveway.
- 13 QLDC will receive an easement fee (valuation pending).

Disadvantages:

- 14 An area of recreation reserve will be encumbered and restricted for private use.

15 Option 2 Grant a Right of Way easement subject to alternative conditions outlined above.

Advantages:

- 16 Similar to Option 1 however the Council may deem it appropriate to add, amend or delete some or all of the proposed conditions.

Disadvantages:

- 17 Similar to Option 1.

18 Option 3 Decline the Right of Way easement application.

Advantages:

- 19 An area of recreation reserve will not be encumbered by an easement for private use.

Disadvantages:

- 20 The applicants access to their property will remain restricted.
- 21 Council will not receive an easement fee.

22 This report recommends **Option 1** for addressing the matter as it will enable the applicant to improve the access to their property without expense or significant impact on Council.

Significance and Engagement

23 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because although it involves a reserve, the impact of this decision is minor.

Risk

24 This matter relates to operation risk OR011A Decision Making. The risk is classed as moderate.

Financial Implications

25 The applicant has paid an application fee and has agreed to pay for all legal and surveying costs to establish the easement.

26 Council will receive an easement fee in accordance with the Easement Policy 2008 (valuation pending).

Council Policies, Strategies and Bylaws

27 The following Council policies, strategies and bylaws were considered:

- Significance & Engagement Policy 2014 – the proposal is a matter with medium significance in terms of this policy.
- Easement Policy 2008 – the application is consistent with the policy.

28 The recommended option is consistent with the principles set out in the named policies.

29 This matter does not have any impact on the 10-Year Plan/Annual Plan

Local Government Act 2002 Purpose Provisions

30 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by allowing for the establishment of a Right of Way Easement to improve access to an established property;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

- 31 The persons who are affected by or interested in this matter are general members of the public.
- 32 Council's intention to grant an easement has been publicly notified however no responses / submissions have been received.

Attachments

- A Plans and photos
- B Owners' application

47 Howard Drive, Lake Hayes Estate – Right of Way Easement Application
Attachment A

Site Plan



Proposed position of ROW alongside driveway access



47 Howard Drive, Lake Hayes Estate – Right of Way Easement Application Appendix 1

Original proposed ROW



Revised ROW position



RoW Application – 47 Howards Drive, Lake Hayes Estate

Date: 24th February 2017.
Applicant: Richard and Charmaine Denney
Applicants Address: 47 Howards Drive, Lake Hayes Estate, Lot 1 DP 447156

A right of way (RoW) is sought over council reserve legally identified as Lot 3 DP 447156 (0.6438 hectares) within the Rural General zone.

We purchased our property in 2016 for our young family. Charmaine is a local teacher and I am a landscape architect.

Our property is bordered on its western and southern boundary by council reserve. The access drive to the carport runs to the south side of the dwelling between the dwelling and a retaining wall that is partly on the southern property boundary with the adjacent QLDC reserve. The gap between the corner of the dwelling and the wall is 2.5m and requires a slight kink to get a vehicle through. Manoeuvring through the gap takes great care, as there is little room for error and unfortunately has resulted in minor damage to the family car and scraping on the house.

We are seeking to carry out a minor realignment of the existing retaining wall to widen the gap between the dwelling and the wall and improve manoeuvrability in and out of the drive. We only need a small area of land to make the access safer and easier to use. The area of council land needed is a small triangular area measuring 2.5m by 10m with a total area of 12.5m².

We are seeking a RoW over council land or potentially, if the option was available, purchasing the land from council.



Description of activity

Excavate earth bank, realign existing retaining wall (1.5m height), batter earth slope at top of wall to match existing, and widen existing driveway by up to 2m width tapering back over a 10m length to the existing wall over a 10m length. Photos of existing site and area of land attached below.

Actual and potential effects of proposal

The area of reserve is currently part of a humped embankment between a manhole to the waterfall pump / storm water junction and the property boundary of 47 Howards Drive. The area of land of the subject site is narrow and drops steeply to the property boundary. It is modified ground formed as part of the original three-lot subdivision (two adjacent rural lots with building platforms and the balance lot vested to council as reserve as consented by RM 110281). The land is vegetated in rough grass and various perennial weeds and is not mown. A mown area is provided to the south of the manhole on flatter ground that forms part of the adjacent road reserve and foreground for the waterfall from the small lake formed as part of the Lake Hayes subdivision.

The area of works is a relatively marginally piece of land on the fringe of the reserve adjacent to an existing residential dwelling. It is a steep short bank adjacent to a residential dwelling and does not contribute to any discernible degree to the overall amenity of the broader reserve. The area of land is a very small slither and the proposed extension of the driveway would have a negligible effect on the amenity of the reserve. It is our intent to plant within our property near the reserve boundary with informal native planting consistent with the reserve planting and integrate the waterfall into our landscaped area and vice versa. We can extend native planting on the embankment adjacent to the retaining wall within the reserve if council considered this a positive outcome of the works and we are happy to provide a landscape plan or to be a condition of approval if granted. Our intent is to vegetate the boundary area to blend seamlessly with the adjacent waterfall planting both to improve our outlook but also improve the surrounding context of the waterfall by reducing the visual presence of the dwelling. We are keen to plant native vegetation in this area to also attract nearby tuis and other native birds to the property and the reserve.

Overall I consider adverse effects on the reserve would be negligible and positive outcomes achieved through indigenous planting supporting landscape amenity and indigenous ecology enhancement on a strip of land that is currently rough and steep exotic grassland.

Details of alternative locations / other routes.

The driveway and carport are existing and it would not be feasible to place an alternative access given the location of the dwelling to the boundary. The only alternative would be to partly demolish the dwelling to widen the access drive in the opposite direction. This would be at significant cost and would not be feasible for us to achieve.

We are seeking a minor adjustment to the existing boundary wall requiring the use of very small area of land to ensure the driveway functions safely. We are responsible and respectful neighbours with the reserve and wish to provide a boundary treatment that supports an enhanced and attractive landscape amenity for the community and resolve an access issue for us with negligible effect on the reserve.

Kind regards

Richard and Charmaine Denney