

#### 4. DELEGATION FOR EASEMENTS OVER RESERVES TO VEST

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The purpose of this report is to recommend to the Council that a Reserves Easement Subcommittee be formed and be given delegated authority to approve or otherwise applications for easements over reserves that will vest in the Council upon the deposit of a plan of subdivision.

#### BACKGROUND

##### New Services

As part of the subdivision process, the Council often receives land for reserve. The Council's subdivisions team generally discourages subdividers from placing new services in the land which will vest in the Council as reserve upon deposit of the subdivision plan. Sometimes, however, the subdivisions team considers that the Council's newly vested reserve will provide the most appropriate route for services or access. Accordingly, the subdivider applies to the Council for easements to be granted over the reserve to vest.

##### Existing Services

In addition to the above situation, it is not uncommon for there already to be existing services within the land which will vest in the Council as reserve. However, those services often have not previously been protected by an easement. In this situation, it is appropriate to at least consider whether an easement should be granted in respect of those existing services.

#### LEGAL ISSUES

Section 239 of the Resource Management Act 1991 sets out the legal requirements of vesting reserves or other land in lieu of reserves as part of the subdivision process. This section provides that such land must be vested free from all encumbrances, or that the land may be vested subject to any specified interests.

The practical result of this section is that any new easements over reserves can only be created once the plan of subdivision has deposited in the Land Transfer Office.

#### REASONS FOR SETTING UP A SUBCOMMITTEE

At present, there is no delegation for easements which arise as a consequence of a subdivision over reserve to vest. This causes considerable delays for subdividers as, depending on the meeting cycle and the date the application is received from the subdivider, it can take up to two months to obtain Council and Department of Conservation approval for the new services. This has led to a number of subdivision development timetables being extended and this is often frustrating to subdividers.

#### COUNCIL RESERVES EASEMENT SUBCOMMITTEE

Section 48 of the Reserves Act 1977 provides for the granting of rights of way and other easements in respect of reserve land.

Under sections 114Q and 114R of the Local Government Act 1974, the Council is able to delegate to an officer sub-committee the authority to approve or otherwise easements across reserve land.

It is recommended that a Reserves Easement Sub-committee be established with power to make decisions on behalf of the Council to approve or otherwise applications from subdividers where:

- (a) the easement relates to land which will vest in the Council on the deposit of a plan of subdivision; and
- (b) the granting of the right of way or easement under section 48 of the Reserves Act will not require public notice.

Public notice is not required when the reserve is unlikely to be materially altered or permanently damaged by the granting of the easement(s), and the rights of the public in respect of the reserve are unlikely to be permanently affected by the establishment and lawful exercise of the easement(s).

It is further recommended that the subcommittee comprise the Parks & Waterways Manager, the Property Manager and the Property Services Manager, with a quorum of two being required to make a decision on behalf of the Council.

Any easement approved by the Reserves Easement Subcommittee would also need to be approved by the Minister of Conservation. The Minister's consent is required irrespective of whether the Council grants its consent at a Council meeting or by an officer subcommittee.

#### **COMPENSATION ISSUES**

At present, compensation is not sought in respect of easements created as part of the subdivision process over land which will vest in the Council as reserve in payment of the subdivider's reserve contribution. It is recommended that this practice continues.

With regard to compensation for new easements over existing Council-owned reserves, this will be dealt with in a separate report to the August Parks and Recreation Committee.

A suggestion by Councillor Sheriff that, at the same time, the Council review the current policy relating to the payment of compensation for easements over reserve land was endorsed by the Committee. The Committee requested staff to report back to a future meeting on this issue.

- Recommendation:**
1. That the Council approve the establishment of a Reserves Easement Subcommittee comprising of the Parks & Waterways Manager, the Property Manager and the Property Services Manager.
  2. That the Reserves Easement Subcommittee be given delegated authority to approve or otherwise easements over land to be vested in the Council as reserve as a result of subdivision where section 48 of the Reserves Act 1977 does not require public notice to be given.
  3. That a quorum of two be required for any decision of the Reserves Easement Subcommittee.