

1. STORMWATER – 120 DYERS PASS ROAD

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| Officer responsible Environmental Services Manager | Author Ron Harris, DDI 371-1672 |
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The purpose of this report is to ask the Committee to consider the use of the Council's powers, pursuant to Section 460 of the Local Government Act 1974, for the installation of a stormwater lateral from an approved subdivision to an outfall in neighbouring land, for which the owners have withheld their consent.

BACKGROUND

On 30 January 2001 a subdivision consent was granted to L B and A M McKeever to subdivide their property at 120 Dyers Pass Road into two allotments. Approval to subdivide was granted by decision of Hearing Commissioner R W Batty.

Subdivision Consent condition 4.2 of RMA 20001048 stated: *"A stormwater lateral is to be laid direct from the sump in the driveway to 11 Kiteroa Place to at least 600mm inside the building area of Lot 2. This work is to be carried out under Building Consent."*

This stormwater lateral to the sump is to serve Lot 2 as the only practicable outfall for the land. Letters dated 21 June 2001 and 21 January 2002 have been received by the Council from the firm of solicitors Weston Ward and Lascelles, acting on behalf of the McKeeveres, stating that the neighbours using the right-of-way off Kiteroa Place in which the sump is located have refused to grant their respective consents to the granting of a drainage easement to enable the connection to be made.

A copy of the plan is attached.

PROPOSAL

A request has therefore been made for the Council to consider the use of its powers under Section 460 of the Local Government Act 1974 for the construction of the drain through two strips of the neighbouring property to the sump.

If the Council is satisfied the alignment is the only practical route of any new private drain, it may pass a resolution for the drain to be constructed, notice of which shall be given to the owners withholding their consent.

Section 460(2) states: "(1) Where, in the opinion of the Council, the only practical route of any new private drain is through one or more adjoining premises, and any owner or owners of any of those premises will not consent to its construction, the Council may, pursuant to a resolution in that behalf, of which notice shall be given to the owner or owners withholding his or their consent as aforesaid, enter upon his or their premises and execute, provide, and do all or any of the works, materials, and things which the Council considers necessary, in order that the drain shall be laid in an efficient manner.

(2) Before passing a resolution under subsection (1) of this section, the Council shall give to every owner refusing his consent as aforesaid an opportunity to be heard before a committee of the Council.

(3) The cost incurred by the Council in carrying out the said work, including the payment of compensation for injurious affection to any premises through which the drain is laid, shall be payable by the Council in the first instance, and may be recovered by it from the owner of the land to be served by the private drain; and section 465 of this Act shall apply with respect to the amount so recoverable as if it were an advance made by the Council under section 463 of this Act.

(4) If agreement cannot be reached between the Council and any claimant for any such injurious affection, the matter shall be determined as if the work were a public work and the claim were a claim for injurious affection in respect thereof under [[the Public Works Act 1981]].

The extent of the work involves approximately 7 metres in length of 100mm diameter piping. Total cost of this work is estimated at \$400, for which the subdivider has agreed to reimburse the Council, plus any compensation which may be payable. No discussions have been held with the affected landowners as to any compensation which may be sought. In such circumstances a Registered Valuer may be engaged to assess injurious affection.

The affected landowners, according to the solicitor acting on behalf of the subdividers, have withheld their consent to the laying of the piping subject to their giving prior approval to a specific design of any house proposed to be built on Lot 2 of the subdivision. As there is no intent on the part of the McKeevers to construct a dwelling on that site for perhaps five to eight years, they cannot comply with that request before the lapsing of the current resource consent and therefore will be unable to complete the subdivision.

On 1 March 2002 Council staff wrote to the landowners who are not consenting, advising that this matter will be heard by the Regulatory and Consents Committee on 15 March 2002. A copy of the letter is attached. A further letter has been sent enclosing a copy of this report.

It is apparent the solicitor for the subdividing owners has been negotiating with all the users of the right-of-way off Kiteroa Place. This was not necessary, as the sump and proposed connection are located within two strips of land on Lot 3 DP 48557 and Lot 4 DP 54248 at No 11 Kiteroa Place and Nos 13/13A Kiteroa Place respectively. (Two flats are built on Lot 4). The two other users of the right-of-way have rights only over those two strips of land and, as such, do not have any right to object to the construction of the proposed drain.

CONCLUSION

The only practical route for the proposed stormwater drain to serve the land involved in the subdivision at 120 Dyers Pass Road is to the sump in one of the two strips of land in the right of way serving No 11 Kiteroa Place and Nos 13/13A Kiteroa Place. Pumping of stormwater to any other outfall is not a practical option. The natural lie of the land at 120 Dyers Pass Road is to the right-of-way in which the sump is located.

Sufficient evidence has been produced by the solicitors acting on behalf of the subdividers to confirm prolonged negotiations to obtain a stormwater easement over the strips of land to the sump have not been successful. Given there is no likelihood the matter can be resolved by private means, the only alternative option open to the subdividers is for them to request the Council to use its powers under Section 460 of the Local Government Act 1974.

Advice has been sought from the Legal Services Unit on this matter. It is their view that as there is no other practical route or outfall available to serve the land, and the natural lie of the land is towards the right-of-way, then the Council is authorised to use its powers under Section 460 in this circumstance.

RECOMMENDATION

1. That the Committee recommend to the Council to use its powers pursuant to Section 460 of the Local Government Act 1974 for the construction of a stormwater drain from the sump in the two strips of land in Lot 3 DP 48557 and Lot 4 DP 54248.
2. That the owner of Lot 3 DP 48557, L R Eagle, and the owners of Lot 4 DP 54248, M Spoors, L Sutherland and J Deering, be advised in writing of the Council's intention to construct the stormwater drain within the two strips of land at Nos 11 and 13/13A Kiteroa Place, pursuant to the provisions of Section 460 of the Local Government Act 1974.

The Committee **resolved** to appoint a Subcommittee of Councillors Wells, Cox and Keast to consider this matter pursuant to the requirements of the Local Government Act 1974, and to report direct to the Council on behalf of the Regulatory and Consents Committee.

The Subcommittee met on Tuesday 19 March 2002 and reports as follows:

The Subcommittee considered the above recommendation from staff. It also heard submissions from Mr Lindsay Eagle, the owner of 11 Kiteroa Place. Mr Eagle stated that he also represented the owners of 13 and 13A Kiteroa Place.

Mr Eagle had earlier refused his consent to the laying of the pipe upon his land and to its connection to the private stormwater sump and drain on his land. He objected to the Council's proposal to exercise its powers under Section 460 of the Local Government Act 1974. He also expressed concern at the impact of the additional connection to the existing private stormwater drain, to access across his property for inspection and maintenance of that existing drain and to liability for future maintenance of the existing drain.

In response to a question put by the Subcommittee, Mr Eagle indicated that he would be amenable to the construction of a drain through his property which would connect directly to the public stormwater drain, a few metres below his property, rather than connecting to the private stormwater sump and drain on his land.

After considering the report and submissions, the Subcommittee concluded that Section 460 of the Local Government Act 1974 should not be used on this occasion.

- Recommendation:**
1. That the Council decline to exercise its powers under Section 460 of the Local Government Act to construct a stormwater drain on 11 Kiteroa Place which will connect the stormwater drain from 120 Dyers Pass Road to the private stormwater sump on 11 Kiteroa Place.
 2. That the owner of 120 Dyers Pass Road be advised:
 - (a) To consider the construction of a private stormwater drain directly from his property to the public stormwater drain situated on 15 Kiteroa Place and for this purpose to seek the consent of each of the property owners through whose properties such drain must pass; and
 - (b) That any future application by him to the Council to exercise its powers under Section 460 in respect of recommendation 2(a) above should be made only after he has attempted to seek, by way of reasonable negotiation, the consent of the property owners affected.