

9. A PROPOSAL LODGED BY DAVIE LOVELL SMITH, ON BEHALF OF LANDAU ESTATE LIMITED FOR THE COUNCIL TO SUPPORT THE LODGEMENT OF A SURVEY PLAN WITH LAND INFORMATION NEW ZEALAND TO CREATE A RIGHT OF WAY AND ACCESS FOR SERVICES OVER COUNCIL RESERVE LOT 14 DP 301914 THAT ADJOINS THEIR PROPERTY.

Officer responsible Michael Aiken, Greenspace Unit Manager, DDI 941 6287	Author Tony Hallams, Policy & Leasing Officer, Greenspace Unit, DDI 941-8320
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PURPOSE OF REPORT

1. The purpose of this report is for the Board to consider an application by Davie Lovell Smith on behalf of Landau Estate Limited for a right of way and associated service easements over Recreation Reserve at Lot 14 DP 301914 to provide physical access through a right of way to an intended adjoining subdivision. The Boards support of the proposal for access is necessary to enable the separate application for subdivision lodged by the applicant with the Councils Environmental Services Unit to proceed.

EXECUTIVE SUMMARY

2. Landau Estates Ltd require an easement over a 10 m strip across Council reserve to provide access and services to an adjoining parcel of land that has been developed by the applicant

FINANCIAL AND LEGAL CONSIDERATIONS

3. The Board has the delegated authority from Council (16 December 2004) to make the decision on behalf of Council whether to grant the easement or not.
4. The reserve described as is a recreational reserve held under the Reserves Act 1977. Part 1 of Section 48 of the Reserves Act 1977 allows for the granting of rights of way and other easements across reserves. Part 2 of this section requires that before granting the easement that the Council publicly advertise the proposal. This was subsequently undertaken over one calendar month, with no objections received to the proposal
5. There will be no cost to the Council if the application is supported The applicant has indicated that should the development of the upper portions of the site proceed the applicant would consider removing the exotic vegetation and landscaping the reserve strip adjoining the site with natives as part of the reserve contribution for the development.

The applicant has also indicated:

"The site is large and subdividable into seven allotments should rights be granted. If rights are not granted over the reserve only two additional allotments are able to be subdivided from the site."

6. The applicant is to pay all legal costs associated with the establishment of the easement, which will include legal and costs associated with lodging the survey plan with Land Information New Zealand.
7. Survey plans of the easement shall be provided by the applicant within three months of the granting of the easement. The applicants legal counsel will also register the easement with Land Information New Zealand as required by the Reserves Act 1977.
8. The approval of the Minister of Conservation will be required, this normally being sought by the Council on behalf of the applicant

BACKGROUND

The applicant has indicated the following:

9. *"Recreation Reserve covered under legal description Lot 14 DP 301914 issued 7 December 2001 cuts access to Lot 2 DP 331391 from Augusta Street and that an exiting right of way existed over the reserve prior to it being vested."*

"Due to the topography of the site and the narrow width of the existing right of way the majority of the site is unable to be provided physical access via the existing right of way. It was for this reason a right of way had been intended to be created over the recreation reserve adjacent to the upper levels of Lot 2 DP 331391, however we have been advised by the previous owner this had been omitted by oversight. Councils subdivision officer Tony Handisides has advised us that access over the reserve for the site has always been anticipated by the Council and he is able to provide additional background should it be required."

Please refer to Tony Handisides memo dated 12 September 2005 under Attachment Two.

10. *"Subdivision consent FER/ 20012.2 was granted by Council on 10 September 2003. This is a subdivision at 87 Augusta Street adjoining the recreation reserve adjacent to the applicant's site. This subdivision is constructing a new access way running alongside the recreation reserve. The applicant has an agreement to make use of this access way to provide physical access to the upper parts of the site providing rights can be obtained over the recreation reserve."*
11. The applicant has indicated that no other options can be considered for access to the intended subdivision due to the steep nature of the site.

STAFF RECOMMENDATIONS

It is recommended that the Board agree to the proposal:

That Landau Estate Limited is granted an easement for a right of way and associated service easements in accordance with Section 48 (1) (a) of the Reserves Act 1977 over approximately 100 m² (the easement strip being approximately 10 wide by 10 m long), of Lot 14 Deposited Plan 301914 as shown in attachment 1, subject to the following conditions:

12. That the applicant provides a compensatory payment to the Council, decided by an independent valuation, for the privilege of creating a right of way and easement to accommodate services.
13. That the applicant lodges a survey plan of the proposed easement with Land Information New Zealand within three months of the granting of the easement.
14. That the applicant registers the easement as required by the Reserves Act 1977.
15. That the Council is not responsible for the maintenance of the right of way across reserve or maintenance and replacement of services in the right of way.
16. That the applicant provides and implements a landscaping plan of the reserve strip in conjunction with the landscaping requirements of the Greenspace Unit.
17. That the applicant pays all the Council costs required in processing this application.
18. That the approval of the Minister of Conservation is obtained.

CHAIRPERSON'S RECOMMENDATION

That the staff recommendation be adopted.