

8. AN APPLICATION BY A AND T BURNSIDE, 1 YELLOWSTONE CRESCENT FOR THE COUNCIL TO SUPPORT THE LODGEMENT OF A SURVEY PLAN WITH LAND INFORMATION NEW ZEALAND BY A AND T BURNSIDE TO CREATE A SEWAGE EASEMENT OVER COUNCIL RESERVE THAT ADJOINS THEIR PROPERTY

General Manager responsible:	General Manager City Environment
Officer responsible:	Acting Greenspace Manager
Author:	Tony Hallams, Policy and Leasing Officer, DDI 941-8320

PURPOSE OF REPORT

1. The purpose of this report is for the Board to consider an application by A and T Burnside for an easement in gross for the drainage of foul water over the adjacent Council recreation reserve being Lot 141 DP 36942, which is located on the corner of Lakewood Drive and Yellowstone Crescent. This easement is required to cover an existing sewer pipe laid through the reserve.

EXECUTIVE SUMMARY

2. A and T Burnside seek to subdivide their property at 1 Yellowstone Crescent, which has a legal description of Lot 104 DP 36942, which is 706m², contained in certificate of title CB 16F/467. The dominant tenement will be Lot 1 DP 349923 which is of 451m², contained in Certificate of Title 204266 and the servient tenement will be the adjacent recreation reserve, Lot 141 DP 36942 on Certificate of Title 16F/175. This easement affects the adjoining above mentioned recreation reserve owned by the Christchurch City Council, insofar that the existing drain which serves the existing tenement and proposed tenements marginally traverses a small area of Council reserve. The Council has no record under the Reserves and Domains Act 1953 or successive Acts, of approval being granted by the previous Council for the placement of this drain across the reserve.

FINANCIAL AND LEGAL CONSIDERATIONS

3. The Board has the delegated authority from Council (8 November 2001) to make the decision on behalf of Council whether to grant the easement or not. This decision can be made by a subcommittee of Council in terms of the Reserves Act 1977 requirements.
4. The reserve described as Lot 141 DP 36942 is a recreational reserve held under the Reserves Act 1977. The area of land occupied by the existing drain on the reserve, which is relevant to the intended subdivision, is approximately 4m². It is considered that due to the small area of reserve land the easement is required over that the Council should not seek compensation.
5. 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 advertised its intention to grant the easement. Part 3 of this section allows these advertising provisions to be dispensed with, if the proposed easement is not likely to *“materially alter or permanently damage the reserve, and the rights of the public are not likely to be permanently affected”*. It is considered that both these tests will be satisfied, because no structures will be built above the ground or new works proposed in the reserve, and therefore the rights of the public will not be affected by the proposal. Public advertising and the consent of the Department of Conservation will not be required, as the applicant has indicated the small length of the drain has existed in the reserve for some 30 years.
6. There will be no cost to the Council if the application is supported.
7. 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.
8. 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.
9. The approval of the Minister of Conservation will be required, this normally being sought by the Council on behalf of the applicant.

STAFF RECOMMENDATIONS

It is recommended that the Board agree to the proposal that A and T Burnside are granted an easement in gross for the drainage of foul water in accordance with Section 48 (1) of the Reserves Act 1977 over approximately 4m² (the easement being approximately 2m wide by 2m long), of Lot 141 DP 36942 as shown in the attachments, subject to the following conditions:

1. 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.
2. That the applicant registers the easement as required by the Reserves Act 1977.
3. That the Council is not responsible for the maintenance or replacement of the existing or intended drainage on adjoining residential lots that connects and run through Council reserve, being Lot 141 DP 36942.
4. That the applicant pays all the Council costs required in processing this application.
5. That the approval of the Minister of Conservation is obtained.

CHAIRPERSON'S RECOMMENDATION

That the abovementioned recommendations be adopted.

BACKGROUND

10. A and T Burnside who own 1 Yellowstone Crescent have made application to subdivide their property. They intend to dispose of the sewage from the new lot that will be created through the existing drain that marginally traverses the adjacent Council reserve land. This will require an easement in gross for the drainage of foul water from their land (dominant tenement) to be granted by Council in their favour across the reserve land (servient tenement), refer to attachments one and two.
11. The Council has no record of approval being granted to place the existing drain across the Council reserve.

OPTIONS

12. The applicants have two options:
 1. Utilising the existing drain to serve any new sewer line connection resulting from the subdivision.

This will require a new easement being created.

2. Maintaining the status quo and installing a separate street sewage connection for the separate parcel of land being created through subdivision.

This will still require the present landowners to make application for the easement in gross for the drainage of foul water where the non-approved installation of the private drain on Council reserve has taken place.

PREFERRED OPTION

13. The applicants have indicated they would prefer to implement the first option because they have already enlisted a surveyor who has produced drawings. In any case an easement will need to be sought over the existing drain which crosses the Council reserve.