

## 12. PASSENGER CABLEWAY - 284A AND 286 MAIN ROAD CLIFTON

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### PURPOSE OF REPORT

1. To present to the Board for a decision under delegated authority from Council, an application to construct a passenger cableway and associated monorail over legal road and Council land on the lower slopes of Clifton Hill to service private residential property (see attachment).

### EXECUTIVE SUMMARY

2. This application involves the installation of a private passenger cableway over Council property for the benefit of two residential properties at 284A and 286 Main Road Clifton as a more convenient means of foot access with the cableway to be shared by at least one other adjoining owner. Presently the only form of access to these properties is by right of way over a substantial ziz-zag concrete stairway of 180 steps on Council property.

The Council property involved with this proposal takes in part of the unformed legal road berm and land (steep rocky cliff face) held in fee simple title which extends from road level up to the boundaries of the residential properties. The Council's title is subject to a number of easements in relation to foot access by the applicants and other neighbouring residents.

The proposed use of Council land for a passenger cableway would be of considerable benefit to the adjoining residential occupiers as the parties to this transaction do not have the opportunity of seeking satisfaction elsewhere.

In considering this proposal issues of some complexity surrounding appropriate tenure, location of existing utilities, public access and statutory compliance in particular the new Building Act have arisen and these are addressed in this report.

This report discusses the various means of accommodating this proposal and concludes with a recommendation that the Board consent to a lease of Council's fee simple land and a licence of the legal road being granted but with specific conditions to limit the Council's liability as landowner.

### FINANCIAL AND LEGAL CONSIDERATIONS

3. There are no financial considerations of any significance for Council. Should the application proceed on the basis recommended rent revenue will be derived from the land and all costs associated with application and its implementation are to be met by the applicants.

It is generally accepted that a lease which gives exclusive right of possession conflicts with the status of road however Council is able under its general authorities to grant interests over road (such as a licence which is not transferable and does not imply exclusive possession) provided this does not conflict with the essential nature of road ie unimpeded safe passage for the public. This is why a licence only can be considered for the legal road berm for the landing site. Council can lease the non-road land comprised in its fee simple title under its powers of general competence under the Local Government Act. Subdivision rules however limit the term of the lease to 35 years less one day including any renewals if the leased land is not defined as a survey parcel.

On 31 March 2005, the majority of the Building Act 2004 comes into force. The new Act includes a cable car within the definition of a 'building'. Further for the purposes of this application the Act deems the Council jointly as landowner with the applicants (provided the applicant is bound by an agreement to lease) as owner of the 'building', this means the Council along with the applicant would be responsible for compliance with the Building Act requirements. These are:

1. A compliance schedule being obtained.
2. To keep the cableway in a safe condition and up to a Warrant of Fitness standard. An annual Warrant of Fitness would be required, which requires certificates from licensed building practitioners with the purpose of ensuring that all systems are performing correctly and will continue to perform.

Although Council responsibility for the Building Act requirements would not be removed, this responsibility can be minimised through attaching specific conditions to the tenure agreements of the land over which the cableway will run.

These conditions to include:

- (a) An independent (to be determined by Council) structural Engineers Certificate being provided by the applicants at their expense prior to any site work as to the stability/suitability of the site for a cableway.
- (b) The design for the cableway and car and all surrounding structures to be approved by the Council, such design to not compromise or any way limit any existing public access rights and the ongoing maintenance, repair/replacement of utility infrastructure (water, sewer and communication cables) on this site.
- (c) Production on an annual basis without demand by the applicants at their cost, evidence of inspection by a suitably qualified person as to the operational safety of the cableway. Further the Council should also have the right to engage a suitably qualified person at the cost of the applicant to check the structure at any stage should the Council believe this to be necessary.
- (d) Production of a forecasted routine maintenance schedule by the applicants.
- (e) All Building Act and Resource Management Act requirements being met and complied with by the applicants.
- (f) That the applicant provides sufficient insurance cover in case the cableway causes damage to any property or person. The Council will need to be named as the party/beneficiary to the policy so it will be able to action a claim on the policy. This policy to be maintained for the term of the agreement.
- (g) The applicants to provide guarantees that the required maintenance and safety recommendations will be completed.
- (h) A bond to ensure compliance with any conditions imposed, this should include provision for ongoing breaches of any condition.
- (i) A condition is also needed to cover the Council when the applicants property is sold. A note on the L.I.M. stating that the property owner is responsible for the maintenance of the cableway will alert prospective purchasers to the situation.
- (j) The Council should also insist that for any breach of condition that the lease/licence be terminated provided however that the applicants have been given reasonable notice in which to rectify the breach and or non-compliance.
- (k) Upon the termination of the Agreement the structures are to be removed at the applicants cost.

#### **STAFF RECOMMENDATION**

It is recommended that the Board grant the owner of 284A Main Road, Clifton, P L and D M Weir a licence of the road berm and a lease of the Council's Title CT 30A/319 for the foot print of a private passenger cableway subject to:

- (a) A deed of licence for a structure on the legal road being entered into.
- (b) A separate lease of Council's "non road" land not to exceed including renewals, a duration of 35 years, less one day.
- (c) The terms and conditions of the licence and lease to be negotiated and concluded by the Facility Assets Unit by to include conditions listed as (a) to (k) above under the heading 'Legal and Financial Considerations'.
- (d) Any further conditions considered appropriate by Council's legal advisers.
- (e) All costs incidental direct or otherwise associated with design, statutory consents, construction, documentation, ongoing maintenance and compliance being met by the applicants.

#### **CHAIRPERSON'S RECOMMENDATION**

For discussion.

## BACKGROUND ON PASSENGER CABLEWAY-284A AND 286 MAIN ROAD CLIFTON

### 4. A. Description of Proposal

The applicants (PL & DM Weir & NJ & J Priestly) propose to make the cableway wheel chair accessible, as some elder family members are no longer able to access the properties which are situated on the upper slopes of Clifton Hill. The applicants seek to construct the cableway up a route which follows an excavated gully (containing existing utility infrastructure) which will involve a 30 metre long rail commencing with the lower terminals situated on the legal road frontage to Council's title abutting Main Road with an upper landing site (incorporating a top drive station and intermediate loading station) with the cableway running under the formed pedestrian path to the electrical winching gear sited on 284A Main Road.

### B. Site Description/Status

The application involves the use of road berm (legal road) and Council property zoned Living Hills being part Rural Section 418 comprised in CB 30A/319 held in fee simple. This site is held under the provisions of the LGA 2004 for no specific purposes and comprises a steep hill slope with a concrete staircase providing foot access by R.O.W. easement to the subject properties. This track also links with a separate strip of land in Council ownership giving foot access to Kinsey Terrace. Note Council's title is situated in a slope Hazard Zone (generally unsuitable for development) and is classified under ECan's Natural Resources Regional Plan which may contain policies or rules regulating the use of the site in regard to a proposed land use

The lower terminal is proposed to be sited between the Council's water pumping station and the existing concrete block garages built on the legal road, one of which is occupied under licence by PL and DM Weir. The proposed route through the excavated gully is considered by the applicants as the most practical while minimising the visual impact. A similar passenger cableway was installed in 2003 to service a neighbouring property at 276 Main Road with this system installed on legal road by authority of the Hagley/Ferrymead Community Board resolution of 29 January 2003 as a structure on street. In this case however only legal road was involved.

### C. Existing Underground Utilities

Within the proposed corridor for the cableway is a sewer line and a water main servicing local properties. The development of a cableway will need to be designed so as not to compromise on going maintenance and or replacement of these lines and the applicants have acknowledged the importance of protecting this infrastructure.

### D. Policy

Related to this application is Council's practice of requiring all structures on the street to be licensed as an encroachment of legal road. Council's policy on the sale of land would apply if this option (discussed below) was preferred by the Board. This policy provides that sale of Council land shall be by way of public tender unless there is good reason to do otherwise. Note the Board does not have delegated authority to sell Council land but could recommend this option to Council if this is considered by the Board the better option to approach this application.

### E. Consultation

The applicants have consulted with and obtained the written support of immediate adjoining owners (as interested parties) of the properties situated at 288, 280 and 284 Main Road.

## OPTIONS

5. The options identified in considering this application are:

- (a) Do nothing - This means declining the application.
- (b) Grant an easement for the cableway corridor.
- (c) Lease part of the Council title and license the road along which the cableway rail would be sited.
- (d) Disposal of Council's land.

## **PREFERRED OPTION**

6. Option number 3 is being put forward as the recommendation.

### **Advantages**

- Not a permanent encumbrance against the land.
- Produces revenue for Council.
- Able to impose conditions.
- Facilitates proposal without unduly compromising future options for land.
- Binds applicants as an owner for the purposes of the Building Act.

### **Disadvantages**

- Two different tenures for different parts of the cableway creating uncertainty for applicants and some impracticalities.
- May limit Council's future options for the site.
- Does not totally remove Council's liability for Building Act compliance, although it must be remembered that if there is a breach or non-compliance with these requirements the Council itself is the authority that would pursue any prosecution.

### **Comment**

Should a licence of the road/lease of the Council's land be approved this would issue in the name of the Weirs initially as a preliminary agreement conditional upon all pre-site engineering tests and all consents statutory or otherwise being in place. The applicant (Weir and Priestly) will enter into an agreement between them to bind their respective use rights and obligations for cost/compliance requirements etc.

While under this option the lease would be for a reasonably long-term, the licence of the road reserve cannot by law impart exclusive possession for the applicant and would carry a condition that the licence could be terminated on six months notice in writing should the land occupied by the base station ever be required for roading purposes. The applicants are aware of this and are comfortable with taking that risk believing that this section of unformed road is very unlikely to ever be required for the road carriageway.

The Transport and City Streets Unit have no problem with granting a licence of this area of the road berm subject to the standard Deed of Licence being entered into by the applicants.

## **OTHER OPTIONS**

- (a) Do nothing. To decline this application is an option for Council. The Council is under no obligation to grant this application which is essentially for private benefit. In granting an application of this nature that involves legal road and Council title, this does expose Council to some risk, particularly with compliance of the provisions of the new Building Act. However, these obligations and responsibilities to a greater extent can be imposed on the applicants.

If this application was to benefit only one residential property it would be difficult to justify grounds for granting the application. Given that up to three properties will benefit from the construction of this cableway, that the route of the cableway will follow close to the Council's title boundary and therefore not have significant impact on the value of the land it was considered there were grounds to put this application forward for consideration.

- (b) Grant an easement for the cableway corridor. This is another option which would require a survey to define the easement corridor and would create a permanent encumbrance against Council's title. This option does not however overcome the need to licence to road and would normally attract a one off compensation payment that may not be sufficient compensation for Council to justify the time and effort in putting in place the agreements to implement this project and the ongoing administration of making sure that compliance requirements are adhered to. Further if an easement was to be considered then the next option, disposal of the Council's land should be first considered.

## **DISPOSAL OF COUNCIL'S PROPERTY**

No interest has been expressed by Council's Units following an internal circulation suggesting the possibility of disposal of this land. A sale would release the capital tied up in the property but there would be costs associated in the disposal process in protecting existing services and public rights of way. Further should the disposal option be pursued it would be strongly recommended that the property be disposed of by public tender. There is not in the report writer's opinion, sufficient grounds to justify unilateral negotiations with the applicants over sale and purchase of this land. At this stage investigations have not been carried out into any obligations Council may have under the offer back provisions of the Public Works Act although it is unlikely that these provisions would apply given the significant change in character and shape of the land since it was originally acquired as part of a larger title by the Sumner Borough in 1897.

Within the Public Excluded section of the Board's meeting is a further report enclosing the valuation advice received from Simes Limited. This report gives some guidance as to the range of values involved with the different options and puts in perspective the financial considerations for these options. This report is a guide for members information only in considering this case and should a decision be given to proceed to negotiate an agreement with the applicants, Council offices would use the valuation report as a starting base in negotiations.

The Council freehold land is subject to a private Right of Way in favour of neighbouring properties two of which are the applicants. This right of way is used informally by other property owners. It is suggested that the Council would require the grantees of the right of way to permit public use of their existing private rights so as to ensure fair access is protected for other local residents. A term to this effect could be included in the approval to grant the lease /licence rights.

## **CONCLUDING REMARKS**

This case has presented many issues of complex nature and has involved considerable thought and research in putting forward a recommendation. While marginal, on balance it is considered there are grounds to recommend that the Board support the application given that construction of the cableway as proposed benefits several properties, would produce revenue from land otherwise not used and would not result in a significant loss in value of the Council's land which is very unlikely to be suitable for a building site considering it's steep nature and existing constraints.