

## 9. FERRYMEAD RESERVE MANAGEMENT PLAN AND TRAM USE

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941 8608
<b>Officer responsible:</b>	Asset and Network Planning Unit Manager
<b>Author:</b>	Richard Holland, Team Leader Network Planning Greenspace

### PURPOSE OF REPORT

1. The purpose of this report is to respond to a request for a report from the Hagley/Ferrymead Community to provide details of the legality of the tram rails and poles within Ferrymead Reserve. This request followed a deputation by appointment by Mr Philip Wright.

### EXECUTIVE SUMMARY

2. The Ferrymead Reserve Management Plan (1992) resolved the dispute which goes back 40 years by allowing the tram infrastructure to remain on the reserve but controlling the tram use in line with a previous agreement. The current Management Plan (refer **Attachment 2**, circulated under separate cover), which has been undertaken within the requirements of the Reserves Act 1977, places the responsibility for approving any one-off tram use of the reserve through the Community Board.
3. The Heathcote County Council (HCC) purchased the land now known as Ferrymead Reserve in 1963 and in 1964 the District Plan gave direction for the development of the historic park area now known as Ferrymead Reserve. This was to recognise the site as the location of the first railway in New Zealand. The HCC approved the proposed development plans and the existing tram lines were built through the proposed historic reserve. A memorandum of lease in 1968 to protect the Tramway Historical Society's interest was executed by the HCC.
4. Use of the Tramway lines through the reserve began in 1970 and in 1973 the Heathcote County Council made Ferrymead Reserve a public recreation area in recognition of the recreation and historic nature of the reserve.
5. Mr Wright who first leased the glasshouses, and then in 1972 became the registered proprietor of the adjoining Ferrymead House, made complaints to the HCC shortly after, that the tram use on the tracks was causing alleged damage to the historic house. He also objected to the noise of the trams the impact on his tenants' privacy. Following these complaints an engineer with expertise in the field of soil mechanics concluded that the damage was mainly due to the house age and subsidence.
6. The dispute continued through the 1970's until 1978 when all the parties being Mr Wright, the Ferrymead Trust and the Heathcote County Council in a signed agreement (refer **Attachment 1**) restricted the use of the reserve for trams by placing a locked block on the line which would only be unlocked with the approval of the Council and informing Mr Wright.
7. During the 1980's the dispute continued and several petitions for and against the tram and the tracks were presented to the HCC and culminated in another engineers report from Lovell Smith and Cusiel Ltd, commissioned by Mr Wright, that conferred generally with the previous report but believed that the potential for settlement of the soil due to the tram vibrations would not be beneficial to Ferrymead House.
8. In 1989 after Local Body amalgamation, the Hagley/Ferrymead Community Board was given responsibility for overseeing the 1978 agreement. In 1990 Mr Wright complained to the Ombudsman that the Council had:
  - (a) failed to prevent a nuisance on land under its control, and that the Council has;
  - (b) allowed an unreasonable use of a public reserve.

On the first complaint (a) that the Council has failed to prevent a nuisance the Ombudsman came to the conclusion that the current use of the line under the controlled 1978 agreement is not a nuisance in the legal sense, but is a nuisance in the general sense.

With regard to the second complaint (b) that the Council allowed an unreasonable use of the reserve was not supported by the Ombudsman and that the use by the trams fits well with the historical nature of the reserve and recreational status of the site. The Ombudsman's recommendation was that the Christchurch City Council prepare a management plan for the reserve and that the plan contemplate that the Tramway Historical Society reroute the line away from Mr Wrights house. The Council pursuant to its management plan for the reserve negotiate a new agreement for the usage which would not involve Mr Wright.

9. In 1992, the then Parks Unit compiled the management plan for the Ferrymead Reserve under the Reserves Act 1977 provisions, which included full public consultation and submissions process. Under the operative management plan approved by the Council the issues of leaving the tracks and poles on the reserve were fully considered in light of the historic and recreation nature of the reserve. They were approved to stay but use of the trams was restricted as per the 1978 agreement signed by all parties. The Hagley/Ferrymead Community Board has the responsibility of issuing approval for the use of the Ferrymead Reserve for tram use applications from the Tramway Historical Society.
10. From records stored at the Linwood Service Centre the use of the tram lines can best be described as very infrequent as the Community Board has approved three main occasions for the tram line use. The occasions were the 10 and 11 January 1998 for the 30<sup>th</sup> Anniversary of the opening of the Ferrymead Tramway. Again on 16 December 2000, and the Recess Committee of the Hagley/ Ferrymead Community Board gave approval for the use on 6 January 2008 (40<sup>th</sup> Anniversary of the tramway opening). In addition the trams were given approval to run on 29 December 2007 to test maintenance prior to the 6 January 2008. There may be other times of use not recorded on the file. However following the protests and other actions to the use of the trams on the reserve in 1998 and subsequent complaints from Mr Wright in 2008 the Tramway Historical Society have been reluctant to request use of the line.

#### **MANAGEMENT PLAN**

11. The 1992 management plan for the Ferrymead Reserve did consider the options of moving the line. This recognised the considerable cost and volunteer labour by the Tramway Historical Society in placing the lines on the land then owned by Heathcote County Council and approved by them. The management plan outlines in detail the movement of the tram lines and costs. The Reserves Hearings Panel had difficulty with the Ombudsman's recommendation regarding rerouting the tramline through the reserve to reduce the nuisance caused to the occupants of Ferrymead House. After considering the options contained in the draft management plan the Hearings Panel concluded that the options contained in the draft plan were not practical on either economic or parks management grounds. The panel took the view that the cost of rerouting the lines at \$60,000 in 1992 could not be justified given that there was a simpler more effective cost of dealing with the problem.
12. However, in light of the Ombudsman's findings, the tramway Historical Societies submission that its activities do not create a nuisance was disallowed by the Hearings Panel, which unanimously concluded that the restricted use option, as provided in the 1978 agreement was the key to controlling the nuisance. Strict adherence to this agreement which was freely entered into by all parties which should provide the tenants of Ferrymead House (Mr Wright) with substantial relief from nuisance conditions concluded the Hearings Panel.
13. Therefore under the operative management plan the issues of leaving the tracks on the reserve were fully considered in light of the historic and recreation nature of the reserve. Use of the trams will be restricted as per the 1978 agreement signed by all parties. The Hagley/Ferrymead Community Board has the responsibility of issuing approval for the use of the Ferrymead Reserve for tram use applications from the Tramway Historical Society.

## **FINANCIAL IMPLICATIONS**

14. There are no financial implications within the Council approved management plan for Ferrymead Reserve. Consideration of costs to reroute the tram lines were not supported in the operative management plan due to the practical solution of restricting the use by the trams.

### **Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

15. There are no provisions within the LTCCP to do anything as nothing is required within the current management plan.

## **LEGAL CONSIDERATIONS**

16. The Management Plan for Ferrymead Reserve was undertaken under the provisions of section 41 of the Reserves Act 1977.

### **Have you considered the legal implications of the issue under consideration?**

17. The Council has adopted the operative management plan which has been through full consultation, submissions received, a Hearings Panel appointed and the Hearings Panel has reported their determinations to the Council for adoption.

## **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

18. Ferrymead Reserve is a Garden and Heritage Park category, reflecting the historic nature of the reserve. The tram use fits within this heritage park category.

### **Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

19. Garden and Heritage Parks, on page 124 of the LTCCP support the strengthening of Christchurch's identity as the Garden City, protect the city's botanical cultural and social heritage, and encourage recreation for all.

## **ALIGNMENT WITH STRATEGIES**

20. The draft Public Open Space Strategy (2009) gives scope to the retention of Garden and Heritage parks such as the Ferrymead Park.

### **Do the recommendations align with the Council's strategies?**

21. The strategy goal is that public open space is diverse, interesting, and promotes local and City identity catering for iconic landscapes and heritage places. These parks have a significant place in our natural and cultural heritage.

## **CONSULTATION FULFILMENT**

22. The management plan was consulted fully through the process under the Reserves Act 1977.

## **STAFF RECOMMENDATION**

It is recommended that the Hagley/Ferrymead Community Board:

- (a) Acknowledge the requirements of the 1992 operative Management Plan for Ferrymead Reserve and the resolution of the long standing dispute within the management plan.

- (b) Endorse the agreed method of controlling the use of the reserve for trams by the Tramway Historical Society by a locked block to which was agreed to by all parties including Mr Wright in 1978, and the Hagley/Ferrymead Community Board continue to follow that agreement when granting use.

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

- (a) That the staff recommendation be adopted.
- (b) That the Hagley/Ferrymead Community Board establish a sub-committee, comprising of the Board Chairperson, Deputy Chairperson and John Freeman, to consider any application from the Tramway Historical Society to operate the tram in the reserve.

#### **BACKGROUND**

The following information is a very short summary of all the information which is mainly covered in the management plan.

- 23. The Heathcote County Council (HCC) purchased the land now known as Ferrymead Reserve in 1963 from Mr Len Shearman who had owned the house and land for 56 years. Mr D Hamilton purchased the homestead house that contained Ferrymead House which was substantially rebuilt by Mr Steadman in 1922. In 1964 following proposals to develop the historic site as a reserve the Heathcote County District Plan gave direction for the development of the historic park area now known as Ferrymead Reserve. This site is the area of the Ferrymead Station at the terminus of the first railway in New Zealand and that the land be developed as a recreational and historic area.
- 24. In 1965 through to 1966 plans were developed by the Ferrymead Project Committee the for-runner of the Ferrymead Trust to place the tramlines on this land. The Heathcote County Council adopted the recommendation of the Reserves Committee in April 1966 that the proposed development plans be adopted. The lines were built through the proposed historic reserve and the HCC executed a memorandum of lease in 1968 to protect the Tramway Historical Society's interest.
- 25. In December 1969 Mr Wright approached Mr Hamilton the owner of the homestead block to lease the glasshouses on his property and later they entered into a sale and purchase agreement for the purchase of the land which included the homestead block and the historic Ferrymead House. In 1972 Mr Wright became the registered proprietor of the land beside the reserve and objected to the tramline operation through the reserve due to the noise of the trams, the impact on his privacy and the alleged impact on the structure of his historic home Ferrymead House.
- 26. Use of the Tramway through the reserve began two years prior in 1970 after tracks were laid on then Heathcote County Council (HCC) land and due to the shortage of developed tracks within the Ferrymead Historic Park at the time. In 1973 the Heathcote County Council made Ferrymead Reserve a public recreation area.
- 27. During 1973 The Tramway Historical Society provided an engineers report by Mr Evans that concluded the alleged damage to Ferrymead House was caused by its age and subsidence and not the running of the trams.
- 28. The Tramway Historical Society provided this information to the HCC in 1974 and there followed much discussion between the Council and the three parties resulting in the HCC seeking a legal opinion and looking at tram use options up until 1978.

29. In 1978 there was a meeting that resolved the issue between the Tramway Historical Society and Mr Wright, resulting in an agreement that was signed by both parties and the Heathcote County Council. The agreement was that a block be placed on the tram line to lock off use and the key be held by the Council. The key was only to be released to the Ferrymead Trust when approval for use had been given by the Council or by such subcommittee with delegated authority for trams to operate on that portion of line beyond the block, and that Mr Wright be advised on all occasions before such approval is given.
30. Debate on the use of Ferrymead Reserve by trams continued through the 1980's with their use being cited as a restricting factor for the reserve and the poles an eyesore. In 1988 a further engineers report conferred with most of the conclusions in the 1973 engineers report, but stated further that the potential for settlement of the soil due to external vibration should not be dismissed.
31. Just prior to Local Government Amalgamation in 1989 the HCC by resolution declared the Ferrymead Reserve as a recreation reserve under the Reserves Act 1977.
32. Since 1990 the Hagley/Ferrymead Community Board has the responsibility for the overseeing of the 1978 tram line block lock agreement.
33. Mr Wright, in 1990, made a complaint to the Ombudsman's office to the effect that the Christchurch City Council had failed to prevent a nuisance on land under its control, and the Council had allowed an unreasonable use of a public reserve.
34. Findings by the Ombudsman in relation to the two complaints were that the first complaint that the Council has failed to prevent a nuisance on land under its control was sustained on general rather than legal grounds. The second complaint that the Council has allowed unreasonable use of a public reserve was not sustained.
35. The Ombudsman further recommended that the Christchurch City Council complete its management plan for the reserve as soon as possible, and that it is in the best interests of the Tramway Historical Society to reroute the tram line away from Mr Wright's house. In 1991 to 1992 the current Ferrymead Reserve Management Plan was developed and adopted.
36. In 2009, the Ferrymead Residents Group, of which Mr Phillip Wright is a member, wrote to the Chief Executive regarding removing the tram poles and tramway tracks from near his house on the reserve as recommended by the Chief Ombudsman. A response provided to the Group advised that a report regarding this matter would be provided to the Hagley/Ferrymead Community Board.

10. **COMMUNITY BOARD ADVISER'S UPDATE**
11. **BOARD MEMBERS' QUESTIONS**
12. **BOARD MEMBERS' INFORMATION EXCHANGE**