

## 8. GRANT OF EASEMENTS - 88F LOWER STYX ROAD

<b>General Manager responsible:</b>	General Manager City Environment Group, DDI 941-8608
<b>Officer responsible:</b>	Unit Manager Transport and Greenspace
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### PURPOSE OF REPORT

1. The purpose of this report is to obtain the approval of the Burwood/Pegasus Community Board under the delegated authority of the Council to grant easements over Section 1 SO 378409 in favour Lot 6 and 7 DP 351539.

### EXECUTIVE SUMMARY

2. Lots 6 and 7 DP 351539 are held in one certificate of title; there are no services between the two lots with the only access to Lot 7 being on foot (refer **attachment 1**).
3. The applicant, Anderson Knightly Enterprises Limited has prepared a plan to provide for easements over the Local Purpose drainage reserve to more effectively link the two lots. This proposal has been accepted by the Asset and Network Planning Unit (refer **attachment 2**). The Transport and Greenspace Unit support the application subject to the conditions as outlined in the staff recommendation.
4. 88F Lower Styx Road is a Local Purpose drainage reserve that was vested in the Council in 2007 and is now known as Section 1 SO 378409. The contour of the land is flat with no noticeable surface water even in times of heavy rain.
5. Prior to this the land was Crown Land with no certificate of title issued, because of the "Crown Land" status, at the time of the depositing of plan 351539 in 2005, it was not practical to include these proposed easements.
6. All the services other than the right-of-way are to be placed underground within the easement corridor, and the right-of-way will be formed in such a manner so the reserve is not materially altered and public access (if required) is not prevented.

### FINANCIAL IMPLICATIONS

7. There are no financial implications for the Council. The applicant is to meet all costs of the work and establishing the easements, as proposed. This report is proposing that in this situation, no one-off compensation payment for the easement right be sought from the applicant as the portion of land that benefits from them at present, has no services and can be accessed on foot only. This is because at the time of the original subdivision, the two parcels of land were separated by Crown Land that has since vested in the Council as Local Purpose drainage reserve.

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

8. Not applicable.

### LEGAL CONSIDERATIONS

9. The Council, with the consent of the Minister of Conservation, has the power to grant or decline easements over reserves under Section 48 of the Reserves Act 1977. Section 48 (3) of that Act provides that the public notification requirement shall not apply where:
  - (a) *The reserve is vested in an administering body and is not likely to be materially altered or permanently damaged; and*
  - (b) *The rights of the public in respect of the reserve are not likely to be permanently affected by the establishment and lawful exercise of the right of way or other easement.*

Both criteria apply to the easement the subject of this application as the physical work will be minimal and access for the public (if required), will not be inhibited.

10. The Burwood/Pegasus Community Board has the delegated authority of the Council to approve the granting of rights-of-way and other easements over park and reserve land under Section 48 of the Reserves Act 1977.
11. The consent of the Minister of Conservation has been delegated to the Council as the administering body where the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale. The Board may exercise this delegation

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

12. Yes, as in paragraphs 9,10 and 11 above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

13. Not applicable.

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

14. Not applicable.

**ALIGNMENT WITH STRATEGIES**

15. Not applicable.

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

16. Not applicable.

**CONSULTATION FULFILMENT**

17. Notification under the provisions of the Reserves Act can be waived as the easements will not materially alter the reserve and public access (if required), will not be prevented. There are no other statutory notifications necessary.

**STAFF RECOMMENDATION**

It is recommended that the Burwood/Pegasus Community Board, acting under the delegated authority of the Council:

- (a) Subject to the conditions below, grant a right-of-way, right to drain water and sewage, right to convey water, electric power and telephonic communication easements pursuant to Section 48 of the Reserves Act 1977 over Section 1 SO 378409 in favour of Lots 6 and 7 DP 351539.
- (b) Exercise the delegation from the Minister of Conservation to consent to the easement and waive the requirement to publicly notify the proposed easement:
  - (i) The easement construction area being maintained by the applicant and their contractors in a safe and tidy condition at all times;
  - (ii) All costs associated with the survey and registration of the easement on the Councils title, being paid for by the applicant;
  - (iii) All the services other than the right of way are to be placed underground within the easement corridor and the right of way will be formed in such a manner so the reserve is not materially altered and public access (if required) is not prevented;

- (iv) The applicant is to provide the Council, within three months of completion of the work, a surveyed easement plan on which the new easement is shown;
- (v) That the applicant not pay a one-off compensatory payment for the privilege of having the easement instrument placed on the Council's title in accordance with Council policy (27 September 2001), because it was not possible to grant the easements when plan 351539 was deposited;
- (vi) The applicant to pay a \$2,000 bond to the Council via the Greenspace Contract Manager, Fendalton Service Centre, and sign a temporary access licence before any construction work commences on the site. The bond, less any expenses incurred by the Council, will be refunded to the payee upon completion of the development to a standard acceptable to the Transport and Greenspace Manager or his nominee;
- (vii) The Council is to charge the applicant for officer's time, and other processing costs (Department of Conservation approval fees etc) to process the application.