

## 7. 28 SPRINGWATER AVENUE – STORMWATER EASEMENT

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941-8608
<b>Officer responsible:</b>	Unit Manager Transport and Greenspace
<b>Author:</b>	Lewis Burn

### PURPOSE OF REPORT

1. The purpose of this report is to obtain the approval of the Shirley/Papanui Community Board, under the delegated authority of Council, to create an easement in gross over a vested recreation reserve in favour of a six Lot residential subdivision for the drainage and treatment of storm water by an open swale that has been formed.

### EXECUTIVE SUMMARY

2. The owners of Lot 3 DP 368948, 28 Springwater Avenue, Northwood, Englefield Limited and Skipio Limited have undertaken a residential subdivision adjacent to the Council's reserve at 26 Springwater Avenue. This subdivision comprises five residential allotments and an accessway to which subdivision consent was granted on 5 October 2009. The current subdivision is the third stage of a three stage subdivision and has provided for the treatment and disposal of storm water on the Council's adjacent reserve (refer **attachment 1**).
3. The Council's recreation reserve was created out of a prior subdivision of the applicant's property, as well as the subject development at 28 Springwater Avenue. From the outset of the earlier subdivision and the subject development the management of the storm water was discussed and the solution arrived at was for the treatment to be a swale within the edge of the reserve long before the reserve was created. This solution was a condition of the October 2009 subdivision consent and received engineering approval from the Council and accordingly a swale was constructed in order to comply with the condition on the subdivision consent.
4. The option of discharging the storm water into the Council's drainage reserve to the south (Lot 66 DP 330387) was looked at but discounted as it was at capacity for the subdivision it was designed to serve. In addition it is understood that the applicant would have had to raise the land and driveway considerably to be able to have sufficient elevation to drain into the existing retention pond. It was a condition of the subdivision consent that the existing drainage reserve is not used for storm water treatment and disposal for any part of this development.

### FINANCIAL IMPLICATIONS

5. There are no financial implications of any significance for the Council with all costs to create the easements to be met by the applicant. Given the background to the creation of the Council's reserve and the construction of the swale which has minimal impact on the reserve it is considered it would be unreasonable to seek a compensation payment in this case.

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

6. Not applicable.

### LEGAL CONSIDERATIONS

7. Section 48 of the Reserves Act 1977 provides that the administering body, with the consent of the Minister and on such conditions as the Minister thinks fit, may grant rights of way and other easements over any part of the reserve for, in this case (1) (f), "providing or facilitating access or the supply of water to **or the drainage of any other land not forming part of the reserve** or for any other purpose connected with any such land".
8. Subsection 2 provides that before granting a right of way or an easement under subsection (1) over any part of a reserve vested in it, the administering body shall give public notice in accordance with section 119 specifying the right of way or other easement intended to be granted, and shall give full consideration, in accordance with section 120, to all objections and submissions received in respect of the proposal under that section.

9. Further subsection (3) states subsection (2) shall not apply in any case 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.
10. In this case the development of the swale within the intended easement has already occurred so there would be no purpose to be achieved in advertising the proposed easement as required by Section 48 (2) of the Reserves Act 1977. Refer paragraphs 3 and 4 for an explanation. This situation has been discussed with the Department of Conservation who have indicated that if the Council approves the easement they will process the application for the Minister of Conservation's consent without expecting the intended easement to be publicly notified notwithstanding that the exemptions as set out in 9 (a) and (b) above can not now be applied.

However if we were to apply these exemptions it could well be considered;

- (a) that a swale comprising some 78 square metres in an unobtrusive area of a reserve having a total area 4670 m<sup>2</sup> does not materially alter the reserve (a substantial or considerable affect on the reserve) and unlikely to be considered to be damage permanent or otherwise to the reserve as a whole, and further,
  - (b) The location of the easement and its physical impact in relation to the public's use of the reserve as a whole is unlikely to permanently affect the public's rights in respect of the reserve by the exercise of this easement.
11. The Community Board has the delegated authority of Council as the decision maker to approve the granting of easements pursuant to Section 48 (1) of the Reserves Act 1977.

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

12. Yes, as 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. Refer paragraph 10.

## **STAFF RECOMMENDATION**

It is recommended that the Shirley/Papanui Community Board acting under the delegated authority of Council pursuant to section 48(1)(f) of the Reserves Act 1977, approve the granting of an easement in gross in favour of Englefield Limited and Skipio Limited over approximately 78 square metres shown as Area C LT 449909 on **attachment 1**. Being part of Lot 2 DP 368948, a Recreation Reserve vested in the Christchurch City Council, for the purpose of drainage and treatment of storm water subject to the following conditions.

- (a) The consent of the Minister of Conservation being obtained.
- (b) The easement terms and costs being negotiated and concluded by the Corporate Support Unit Manager or her nominee.
- (c) All costs associated with the survey and registration of the easement on the Councils title, being paid for by the applicant.
- (d) The applicant is to provide the Council, within three months of consent being given by the Minister of Conservation, a surveyed easement plan on which the new easement is shown.
- (e) The Council is to charge the applicant for officer's time, and other processing costs (DOC approval fees etc) to process the application for the easement in accordance with Council Policy (12/7/01).

## **CHAIRPERSON'S RECOMMENDATION**

That the staff recommendation be adopted.