

1. EASEMENT REQUEST FROM JOHN LEENEN, 8 WAITIKIRI DRIVE

General Manager responsible:	General Manager Environment Group, DDI 941-8656
Officer responsible:	Corporate Support Manager
Author:	Angus Smith, Property Consultancy Team Leader

PURPOSE OF REPORT

1. The purpose of this report is to inform the Council of an officer decision made under delegated authority declining a request for an easement through Bottle Lake Forest Park to the rear of a property off 8 Waitikiri Drive.

EXECUTIVE SUMMARY

2. Mr John Leenen, the owner of the property at 8 Waitikiri Drive has been requesting access by way of an easement along the edge of Bottle Lake Forest Park off Rothesay Road near the intersection with Waitikiri Drive.
3. This request has been considered on numerous occasions over a number of years by various Council staff and has been repeatedly declined. More recently this occurred formally through the exercising of an officer delegation.
4. Council officers believe this matter has been well considered and the decision making process sound and objective. Obviously this is not Mr Leenen's preferred outcome and as a result he has not accepted the decision nor given up on his request.

FINANCIAL AND LEGAL CONSIDERATIONS

5. The officer delegation exercised in this instance is to the Corporate Support Manager as follows:
"Grant or decline, subject to any reasonable term or condition, consent to dealings with the Council's property including consent to the registration, variation and discharge of mortgages, easements, leases and subleases and their registration, caveats and other documents and similar dealings (excluding Reserve land). 23.10.96"

STAFF RECOMMENDATION

It is recommended that the information be received.

BOARD RECOMMENDATION

That the Council consider revoking the delegated authority of the officer, insofar as it affects the property at 8 Waitikiri Drive and invite Mr Leenen to reapply for an easement off the property at the rear of 8 Waitikiri Drive.

BACKGROUND

6. Over a number of years Mr John Leenen, the property owner of 8 Waitikiri Drive has lobbied the Council through a number of forums to gain private access rights through Bottle Lake Forest Park to the rear of his property, as indicated on the **attached** plan.
7. Mr Leenen is desirous of obtaining these rights in order that he can develop Lot 1 without providing access through his adjoining Lot 3 that has frontage to Waitikiri Drive. He does not wish to provide access through Lot 3 that contains his existing dwelling because:
 - It would require a garage/office to be relocated/removed.
 - The rear of Lot 3 is lower than the front portion containing the dwelling therefore some reasonable contouring/engineering work would need to occur.
 - Having a driveway close to his existing house to access Lot 1 would detract from the amenity value of his and potentially the neighbour's property.
8. Various Council officers have considered this matter over the years with all consistently declining the request. It should be noted that there is no obligation to grant this easement, it is simply the Council's prerogative.

9. It is also interesting to note that the Waimairi District Council's approval to this subdivision in 1989 was quite explicit in that Lot 1 be amalgamated with Lot 3 and that this was in accordance with the requirements and provisions of the then operative planning scheme. As a result it was noted on the title that Lot 1 had no frontage to a public road, this being the reason for amalgamation. These were accordingly conditions known to Mr Leenen at time of purchase.
10. In September 2004 Mr Leenen was formally advised that his request was declined and this was done so through an officer exercising delegated authority. This followed repeated requests and similar advice from officers over a number of years. Mr Leenen has continued to challenge this decision and has been met with the same response. More recently, in August 2005 he was again formally advised, following a review of the file by different Council officers that we would not resile from our original position. The factors in this decision are as follows:
 - Nothing has materially altered over the years to warrant a change in the Council's thinking.
 - The original intent of Council subdivision and amalgamation of the two lots was for them to be accessed through Waitikiri Drive.
 - The impact on the potential future use of this land and the impact of providing access through the property fronting 8 Waitikiri Drive is considered minor and achievable.
 - There is potential for adjacent owners to claim similar access rights based on the precedent of this application, including creating a city-wide precedent.
 - It is considered that the cost of accessing/developing Lot 3 through Bottle Lake Forest Park could well be at least as costly as any internal access options.
 - The future planning/development for Bottle Lake Forest Park is not yet finalised.
11. Though the land over which Mr Leenen has requested access rights is held as Fee Simple and zoned Residential, these factors are irrelevant to its current purpose and management. The land is clearly held and administered as part of Bottle Lake Forest Park.
12. While we acknowledge and understand that this is not the response and decision Mr Leenen would have wanted, this matter has been considered and reviewed by numerous Council officers from at least 2002. As a result it is considered that the decision on this matter has a high degree of independence and objectivity.

OPTIONS

13. It is not legally possible for elected members to review or reverse the decision of a Council Officer properly acting under an express delegated authority from the Council. A decision has been made under officer delegation and it is unlikely given the history and prior consideration that officers would resile from this decision.
14. However, if elected members were of a mind to review the officer decision it would be necessary for the Council to:
 - (a) Revoke the delegated authority of the officer concerned insofar as it affects the property at 8 Waitikiri Drive; and
 - (b) Invite Mr Leenen to reapply.

If Mr Leenen obliged with a further application then it would be necessary for the Council to consider the merits of his new application directly. The Board would have the opportunity to first make a recommendation to the Council.

This use of this option is not recommended as the administration of this type of minor application is clearly a management issue and not a governance issue.