

## 12. EASEMENT OVER RESERVE 4450, CHARTERIS BAY

<b>General Manager responsible:</b>	General Manager, City Environment Group DDI 941-8608
<b>Officer responsible:</b>	Asset and Network Planning Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to enable the Reserves Hearings Panel to recommend to the Lyttelton/Mt Herbert Community Board that it reconfirm the decision that the Board made on 16 December 2008 to grant right-of-way easements over Reserve 4450, Charteris Bay for the benefit of the adjoining land owners of Lot 40 DP 12000 and Lot 1 DP 12335.

### EXECUTIVE SUMMARY

2. The Lyttelton/Mt Herbert Community Board approved the granting of right-of way easements over Reserve 4450 at its meeting on 16 December 2008. The report (and its accompanying attachments) plus the minutes from that meeting (including the decision) are attached as **Attachment 1**.
3. It was considered at the time by staff that as the reserve would not be materially altered or permanently damaged and the rights of the public in respect of the reserve would not likely be permanently affected, that public consultation was not required to be undertaken and the Council could exercise the delegation from the Department of Conservation to grant the easement, subject to the approval of the Minister of Conservation.
4. At the meeting held on 16 December 2008, a public deputation was made by Miss Elizabeth Graham. Council officers responded to Miss Graham's concerns which cumulated in a decision being made by officers that given her concerns it would be in the best interest of the Council to publicly advertise in the local newspaper the Council's intention to grant the easements in accordance with the requirements of section 48(2) of the Reserves Act 1977, (the Act), thus assuring the Department of Conservation that the Council had properly considered Miss Graham's concerns.
5. Public notices were placed in the Akaroa Mail and Bay Harbour News in June 2009, inviting members of the general public to make submissions for or against the proposal. Miss Graham notified officers of her intention to make a submission. Officers held a meeting with her prior to the closing date for submissions to outline the process for making submissions and to further discuss if there was any way forward that would satisfy her concerns thereby eliminating the need for a hearing. Miss Graham could not be satisfied and she made a formal submission (**Attachment 2**) indicating her desire to be heard in front of a Reserves Act Hearings Panel.
6. The Reserves Act Hearing Panel convened on 2 July 2010 to hear the matter (minutes attached as **Attachment 3**). The Panel was comprised of Councillor Barry Corbett, Chairperson; Akaroa/Wairewa Community Board Chairman Stewart Millar and Spreydon/Heathcote Community Board Member Tim Scandrett
7. The Reserves Act Hearings Panel is recommending to the Lyttelton/Mt Herbert Community Board that the Board reaffirm its earlier resolution to grant the easements subject to a number of conditions.

### FINANCIAL IMPLICATIONS

8. The applicants are responsible for all the costs associated with the granting of the easements. The Reserves Hearings Panel is recommending however that the applicants not be responsible for the costs associated with the hearing, including staff report preparation time, it being believed that the granting of the easements and registering them on the title of the reserve should have occurred before the reserve was gazetted as such. The cost of the Hearing including staff preparation time etc is able to be covered within existing Council budgets.

9. The report to the Community Board at its 16 December 2008 meeting explained that *“Council has a policy that provides for the charging of compensation when granting a right-of-way or other easements over park or reserve land that is owned by the Council at the time a request for an easement is made. In this case, however, no compensation will be sought as there is a longstanding agreement, dating prior to the vesting of the land as reserve, that the owners of the property can have access over this reserve.”*

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

10. Yes.

**LEGAL CONSIDERATIONS**

11. Reserve 4450 which is 1521 square metres in area is a reserve vested in the Council for plantation purposes under the Public Reserves, Domains and National Parks Act 1928, which was one of the earlier acts that was a forerunner to the Reserves Act 1977. This reserve is commonly known as Diamond Harbour Plantation Reserve.
12. Section 48 (1) (a) of the Act enables the Council to grant rights of way and other easements across reserves. Section 48(2) of the Act requires the Council to publicly advertise its intention to grant the easement, for one calendar month, to enable interested parties to make a formal objection or submission to the proposal. Section 48(3) of the Act allows these advertising provisions to be dispensed with if the proposed easement is not likely to “materially alter or permanently damage the reserve, and the rights of the public are not likely to be permanently affected”.
13. Staff deemed that this application met the requirements of Section 48(3) of the Act and therefore public advertising was not carried out before this application was reported to the Community Board meeting held on 16 December 2008 for a decision on the grounds that permission had been granted by the former Mt Herbert County Council in September 1941 (the original letter being sighted by Council staff) for construction of the driveways. This was before the reserve was vested as reserve in the Mt Herbert County Council on 26 January 1944 under the Public Reserves, Domains and National Parks Act 1928. Therefore for all intents and purposes, technically during the period the land has been a reserve the driveways have been in place across the reserve or formal permission granted for them to be in place.
14. Given the circumstances of Miss Graham’s public deputation to the meeting on 16 December 2008 of the Lyttelton/Mt Herbert Community Board, officers made the decision to undertake the advertising required under section 48(3) of the Act to ensure that the matter was beyond legal challenge, thus ensuring that the Department of Conservation would be satisfied with the process undertaken to grant the easements as the Minister of Conservation’s consent to the granting of the easements is required.
15. The Council’s Legal Services Unit will be involved in the final documentation of the easement. A copy of the submitter’s submission the Council officer’s report to the Reserves Hearings Panel, and Report to the Community Board and the resulting decision of the Board will be sent to the Minister of Conservation to obtain consent to the easement being granted as is required by the Act.
16. The Council’s standard easement instrument will be completed and survey plans of the easement will be registered on the title at Land Information New Zealand once the Minister of Conservation’s consent is obtained to the granting of the easement.

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

17. Yes – See above

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

18. Not applicable

**Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?**

19. Not applicable

**ALIGNMENT WITH STRATEGIES**

20. Not Applicable

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

21. Not Applicable

**CONSULTATION FULFILMENT**

22. The Council's intention to grant the easement was advertised in the public notices column of The Akaroa Mail and The Press on 19 and 22 June 2009, respectively, in which it was indicated that interested members of the public had until Monday 27 July 2009 to make formal submissions to the Council's proposal to grant the easement over the reserve.
23. The legal minimum public advertising requirement under section 119 of the Act is to advertise once in a newspaper circulating in the area in which the reserve is located.
24. One formal submission was received which opposed the proposal. The full text of the submission is shown in **Attachment 2**. The submitter attended the Reserves Hearings Panel hearing on 2 July 2010 in support of her submission.
25. The Hearings Panel deliberated on the issues raised by the submitter with the assistance of the staff report sent to the hearing panel members and the submitter before the hearing.
26. The minutes of the Reserves Hearings Panel's deliberations are attached to this report as **Attachment 3**.

**PRECIS OF SUBMITTERS CONCERNS AND OFFICERS COMMENT**

27. The submitter was concerned that this is a public reserve, and yet there is no indication of this on the roadside. Officers commented that the reserve is held for forestry not recreation purposes, and therefore unlike for a recreation reserve, there is no automatic right for the general public to recreate upon the reserve this being at the Council's pleasure.
28. The submitter was concerned about the width of the easement being granted. Officers commented that the easement width is governed by the Banks Peninsula District Plan, which needed to be pragmatically applied to ensure all of the necessary changes to the landform are contained within the easement.
29. The submitter questioned who gave permission for some of the later work undertaken to maintain the driveway within the easement. Officers commented, after further investigation, that verbal permission was obtained from the Council authorities at the time to undertake the work.
30. The submitter sought clarification on one point concerning the easement, and raised a number of other issues concerning the reserve that are not directly associated with whether or not to grant the easement.

**RESERVES HEARINGS PANEL RECOMMENDATION**

31. The Reserves Hearings Panel (Reserve 4450 Charteris Bay) recommend that the Lyttelton/Mt Herbert Community Board acting under the delegated authority of the Council endorse its original decision made at its meeting held on 16 December 2008 to approve the granting of the easements for right-of-ways pursuant to section 48 of the Act over Reserve 4450 as shown in Digital Title Plan 500928-03 subject to the following conditions:

- (a) The applicants each being responsible for all costs associated with the easement (processing, survey, legal and registration) including all Council related costs (with the exception of the costs associated with the hearing).
- (b) The consent of the Department of Conservation being sought.
- (c) That staff view the original copy of the Mt. Herbert County Council to Mr Falla dated 7 September 1943 authorising permanent access to the site.

**BACKGROUND**

- 31. Staff have been shown the original letter to Mr Falla dated 7 September 1943 from the Mt Herbert County Council and believe without question it to be an original document.