



## DEMOCRACY SERVICES

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Democracy Services File:  
Group File:

Crescent Rd East

## Memorandum

To: J McPherson, General Manager – Art Community and Recreation, Civic 13  
A McKenzie, General Manager, Finance - Civic 13  
J Lovell-Gadd, Group Manager, Property – Bledisloe 7S  
S Drake, Acting Group Manager, Property - Bledisloe 7S  
A Dobbie, Group Manager, Arts Community and Recreation Policy - Civic 3  
C Parr, Group Manager, Arts Community and Recreation Services - 360 Queen St Level 5  
D Godinet, Property Development Manager – Bledisloe 7N  
C Tse, Corporate Solicitor – Bledisloe 7N  
H Wheatley, Property Officer – Bledisloe 7N  
J Chisholm, Democracy Advisor – Civic 14

Date: 25 September 2007

Delegated  
Authority:

A Dobbie, Group Manager Arts Community and Recreation Policy, and  
C Parr, Group Manager, Arts Community and Recreation Services – 07/09/2007

  
DEMOCRACY ADVISOR

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### FORMALISATION OF VEHICLE USE – CRESCENT ROAD EAST ACCESSWAY, WAIHEKE

The attached report in the above-mentioned regard from the Property Officer, dated 31 August 2007 refers.

It was resolved that the recommendation contained in the report be approved as follows:

- A. That in order to formalise the vehicle use of Council land being Lot 229 DP 15795 it is recommended that the Group manager, Arts, Community and Recreation Policy and the Group Manager, Arts, Community and Recreation Services agree to allow landowners west of the junction with Crescent Road East, Waiheke that currently use the access with their vehicles to continue, and endorse the principle that when adjacent landowners request formal easements over Council's land the grant of an easement is to be conditional on appropriate measures to improve the Council land. These measures could be for the private landowner to grant an easement in favour of Council or transfer ownership of the relevant part of their land for addition to Council's land, in order to widen the Council land or provide turning or passing bays. These exchanges are to be subject to valuation of the betterment provided to each party, including adjustments to development potential of the private land.**

- B. That arrangements as to easements and/or exchanges for each property that currently use the council land (described as Lot 229 DP 15795) for vehicle access, be referred to the Arts, Culture and Recreation Committee or the Group Manager, Arts, Community and Recreation Policy and the Group Manager, Arts, Community and Recreation Services, as required by the delegations, for approval, with final terms and conditions to be approved in accordance with delegations.**
- C. That letters be sent to the landowners west of the junction with Crescent Road East, Waiheke to inform them of the decision.**
- D. That the Waiheke Community Board be informed of the decision.**

J McPherson, General Manager – Art Community and Recreation, Civic 13

A McKenzie, General Manager, Finance - Civic 13

J Lovell-Gadd, Group Manager, Property – Bledisloe 7S

S Drake, Acting Group Manager, Property - Bledisloe 7S

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C Tse, Corporate Solicitor – Bledisloe 7N

- For your information.

H Wheatley, Property Officer – Bledisloe 7N

- Please take the necessary action to implement the above resolution.

J Chisholm, Democracy Advisor – Civic 14

- Please pass this resolution onto the Waiheke Community Board, for their information.



Received  
7/9/07

Approval for Agenda



Open

Confidential

**Title:** Formalisation of Vehicle Use – Crescent Rd East Accessway  
**Report to:** Group Manager Arts Community Recreation Policy  
Group Manager Arts Community Recreation Services  
**Author:** Helen Wheatley – Property Officer  
**Date:** 31 August 2007

Democracy services file:

Group file:  
Crescent Rd East

**Keywords:** Vehicle Use, Accessway, Crescent Rd, Waiheke

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## 1.0 Summary and conclusions

- The Council land described as Lot 229 DP 15795 is a narrow (4m wide) strip of land at the rear of several steep private properties along Crescent Rd West, Crescent Rd East, Hill Rd and View Rd between Palm Beach and Onetangi.
- Vehicle access along the Council land to the rear of many of these properties has been permitted informally for over 40 years. The Council land is also used for pedestrian access, linking reserves with roads, and as part of a local walkway network.
- In terms of Council's Private Use of Public Space policy approved in 1999, Council is required to minimise the private use of public space or, where exceptional circumstances apply, to formalise the use by granting easements, charging a fair market consideration to reflect the benefit which the private owners derive.
- On 21 June 2007 the Waiheke Community Board considered a report from the Property Group Manager that set out options for future use of the land. The board resolved that its preference is that current landowners be permitted to continue without formal easements, with a view to formalising agreements as properties change hands. The board also resolved that the views of property owners on the issue be sought, and that it supported in principle the granting of easements for new developments.

- This report sets out comments on the board's resolutions and makes recommendations that incorporate the board's intentions but formalise Council's intentions for managing this area of land appropriately.

## **2.0 Recommendations**

- A. That in order to formalise the vehicle use of Council land being Lot 229 DP 15795 it is recommended that the Group Manager Arts Community Recreation Policy and the Group Manager Arts Community Recreation Services agree to allow landowners west of the junction with Crescent Rd East that currently use the access with their vehicles to continue, and endorse the principle that when adjacent landowners request formal easements over Council's land the grant of an easement is to be conditional on appropriate measures to improve the Council land. These measures could be for the private landowner to grant an easement in favour of Council or transfer of ownership of the relevant part of their land for addition to Council's land, in order to widen the Council land or provide turning or passing bays. These exchanges are to be subject to valuation of the betterment provided to each party, including adjustments to development potential of the private land.
- B. That arrangements as to easements and / or exchanges for each property are to be referred to the Arts Culture and Recreation Committee or the Group Manager Arts Community Recreation Policy and the Group Manager Arts Community Recreation Services, as required by the delegations, for approval, with final terms and conditions to be approved in accordance with delegations.
- C. That letters be sent to the landowners west of the junction with Crescent Rd East to inform them of the decision.
- D. That the Waiheke Community Board be informed of the decision.

## **3.0 Narrative**

### **3.1 Background**

- As set out under the summary and conclusions above, the private vehicle use of this area of Council land has been permitted informally for several years, but this use is now contrary to Council policy.
- In terms of Council's Private Use of Public Space policy approved in 1999, Council is required to minimise the private use of public space or, where exceptional circumstances apply, to formalise the use by granting easements, charging a fair market consideration to reflect the benefit which the private owners derive.
- Requests are now being received from landowners for vehicle right-of-way easements over this accessway for ease of access and to allow subdivision of properties. The most recent application is from the landowner at 62 Hill Rd. The applicants have offered an area of their land to Council for vehicle use as part of the proposal.
- On 22 September 2004 the board considered a report from the Property Group Manager that recommended approval of an easement for vehicle access for one owner, at 64A Hill Rd, with that owner providing a 2m wide strip to widen Council's land, and that the long-term widening

of Council's land be achieved as subdivision of adjacent lots occurs. However the board did not endorse the report, as it was the board's view that the recommendations did not take into account the wider community interest. A further report was requested examining the long-term options for a solution. The 64A Hill Rd property owners did not pursue the vehicle easement for other reasons.

- The 2004 report also noted that, if subdivision trends continued, there could ultimately be over 230 vehicle movements per day across the Council land. Council's parks officer has assessed that currently there are approximately 40 vehicle movements per day along the accessway, from 10 properties; hence approximately 4 per hour between 8am and 6pm, with a bias towards commuting times when walkers are less likely.
- The 2004 report considered that minimum widths of the lane should be 5.8m, to accommodate 2 lanes at 2.4m plus a 1.0m footpath, but acknowledged that while subdivision was still occurring, a 4m lane, with occasional passing bays, may be adequate.
- In response to the community board's request for a report examining options for a solution, these were provided to the board's meeting on 21 June 2007 with some comment on advantages and disadvantages of each option. The options presented to the community board are as set out below under 3.5.
- The community board resolved as set out under 3.6 below. The community is consulted for the reason that local decisions are best made close to local people and by local people.
- In order to
  - a) endorse the community board's recommendations,
  - b) provide a satisfactory solution that balances the nature of this Council land, being a strip of land only 4 metres wide and currently a vehicle / pedestrian track, with appropriate time and effort on Council's part to formalise private vehicle use, and
  - c) not compromise pedestrian usage or safety

it is recommended that you agree to allow landowners west of the junction with Crescent Rd East that currently use the access with their vehicles to continue, and endorse the principle that when adjacent landowners request formal easements over Council's land the grant of an easement is to be conditional on appropriate measures to improve the Council land.

### **3.2 Delegations**

- The delegation to approve in principle easements for private vehicle use through public open space is with the Group Manager Arts Community Recreation Policy and the Group Manager Arts Community Recreation Services. The advice and recommendations of the community board is to be provided before this decision is made. The value of each easement is to be based on the full added benefit to the grantee of the easement or other benefiting parties. The terms and conditions of the easements are delegated to the Property Group Manager.
- The delegation to approve in principle the sale, acquisition or exchange of Council open space land is with the Arts Culture and Recreation Committee. The advice and recommendations of the community board is to be provided. The terms and conditions of the sales, acquisitions or

exchanges are delegated to the Property Enterprise Board or delegation, depending on the quantum and whether it is within 10% of the valuer's recommendation.

### 3.3 Property Profile

- Land: Area 3005m<sup>2</sup> being Lot 229 DP 15795 (NA 4D/1162). Held by Council in fee-simple. Prior to 1964 the land was held as plantation reserve subject to the Reserves and Domains Act 1953. By Gazette 1964 pg 1005 the reservation was uplifted and Council was able to sell the land, with the proceeds to be applied to other reserves. This ability to sell the land is recorded in the gazette notice, but details on Council's files of how the land would be sold have not been found.
- Location and description: A narrow (4m wide) strip at the rear of properties on Crescent Rd West. Linked to Hill Rd via Lot 425 at 66 Hill Rd and via the ROW access adjoining 34 Hill Rd (see below). Linked to Crescent Rd East approximately in the middle of the land, and to a local purpose (access) reserve at the furthest eastern boundary. Partly formed as a dirt vehicle track, partly metalled.
- District Plan zoning: Operative LU17, proposed local purpose. This supports the open space status of the land.
- Current use: Vehicle access to private properties (see plans attached). The properties currently using the accessway for vehicle access include those at 32, 34, 36, 38, 44, 48, 52 and 56 Crescent Rd West and 36, 38C and 64A Hill Rd.
- Part of a cross-country route from Palm Beach to Onetangi Beach for walkers. Currently averaging 10 walkers per day plus residents.
- Management plan: Council's draft management plan for various Waiheke reserves that was prepared in the 1980s acknowledged that individual access drives to each house from Hill Rd / Crescent Rd West would be difficult to achieve and would require the removal of substantial areas of bush. The plan recommends that limited vehicle access is maintained, and that the reserve be incorporated in an island walkway system.

#### Adjoining reserves / pedestrian links:

- 66 Hill Rd: Area 3535m<sup>2</sup> being Lot 425 DP 16816 (NA 398/288). Held by Council in fee-simple. Prior to 1969 the land was held as recreation reserve subject to the Reserves and Domains Act 1953. By Gazette 1969 pg 1733 the reservation was uplifted. Comprises a 20m wide strip from Hill Rd to the subject land. Partly in bush and partly pedestrian track.
- Easement adjoining 34 Hill Rd: A right-of-way easement approximately 2m wide for public access (pedestrian and vehicle) over land adjoining 34 Hill Rd, to Hill Rd.

### **3.4 Request for Access Easement to proposed subdivision 62 Hill Rd**

A request has been received from the landowners at 62 Hill Rd for an easement to the property for which a 4-lot subdivision is proposed. The applicants have offered an area of their land, a strip 2 metres wide along the length of the property boundary with the accessway, to Council for vehicle use in exchange for a vehicle right-of-way easement in perpetuity over the reserve. The relative value of the exchange to each party has not been assessed by a valuer.

It is recommended that this request not be approved in isolation from a recommendation on the situation for the whole accessway, as this would not only create a precedent but also would allow more vehicles along the accessway without addressing the overall issues.

### **3.5 Options**

The options below were presented to the Community Board on 21 June 2007, with advantages and disadvantages of each option noted.

#### **3.5.1 Option 1**

Decline all new requests for vehicle access, and require all current vehicle use to cease with appropriate notice. Landowners that currently use the access could be given a reasonable period of time to make alternative arrangements using their own land or neighbours' land, or forego vehicle access to their dwelling. Promote land as a walkway, with appropriate signage and clearing of long grass, some landscaping.

Advantages:

Treats all landowners equally. Although there is not a safety issue at present, this option eliminates any safety concerns with respect to vehicle use of this narrow strip of land.

Disadvantages:

Many landowners who currently use the access may consider this decision unfair, and may argue that Council's regulatory authority and the draft management plan for the land have not indicated that the private use would be terminated. The decommissioning process would be difficult and time-consuming, and some landowners may not wish to enter into such arrangements. There is the question of whether access to them should be blocked, and how this would be done and enforced.

#### **3.5.2 Option 2**

Decline all new requests for formalised vehicle access easements. Allow landowners that currently use the access with their vehicles to continue, but without granting any formal easements over the land. Advise the landowners using the access that Council may at any time disallow access.

Advantages:

Does not inconvenience current users. Reduces safety concerns with respect to increased vehicle use, as vehicle numbers would be limited to those currently driving along the land. Does not require officers to get involved in a process formalising easements or progressively blocking access.

Disadvantages:

Is contrary to Council's Private Use of Public Space policy. Doesn't treat all the landowners equally as it advantages those who have already been using the track for vehicle access. Is contrary to other situations on Waiheke where informal vehicle access is being progressively removed or formalised.

### **3.5.3 Option 3**

Enter into agreements with all landowners west of the junction with Crescent Rd East that are currently or proposing to use the land for vehicle access. These owners are to provide Council with an easement or ownership of part of their land for addition to Council's land, in exchange for formal vehicle access, subject to valuation of the betterment that this exchange would provide to each party, including adjustments to development potential of the private land.

Advantages:

The land will progressively be widened, hence reduced safety concerns. Does not inconvenience current users, who are all located west of this junction.

Disadvantages:

Difficult and time-consuming to negotiate and then administer. Some landowners may not wish to enter into such arrangements. There is the question of whether access to them should then be blocked, and how this would be done and enforced. An alternative would be to allow those who don't enter into easements to continue using the accessway, but they would not get the security of access and accordingly their property value would be less than that of neighbours who have a registered easement.

Council's land could also have varying widths for many years, with resulting possible safety issues (as vehicle numbers increase) and maintenance problems.

### **3.5.4 Options not supported by officers**

- A. Sell the land, in parts, to individual landowners while retaining a public pedestrian easement. Individual landowners could then grant vehicle easements to each other.

Advantages:

Solves Council's maintenance and regulatory responsibilities once all the land is sold.

Disadvantages:

There could be many years before all the land is sold, causing maintenance and administration difficulties. Some landowners may not wish to enter into such arrangements. There is the question of whether access to them should be blocked, and how this would be enforced.

The potential use of the land exclusively as a walkway would be lost.

- B. Declare the land to be legal road, and form the land as road. Council would be unable to do this unless the land met the minimum required widths for a road which it presently does not, so Council would be required to purchase land from adjoining owners to widen the road and / or



provide passing bays / turning areas. In addition, all the private properties affected have legal access from Crescent Rd West, Crescent Rd East, Hill Rd or View Rd. Council is not required to ensure that all private properties have vehicle access to the dwellings on their properties.

#### Advantages

Does not inconvenience current users. Reduces safety concerns with respect to increased vehicle use. Enables continued use for walkers.

#### Disadvantages

Would be costly and time-consuming to negotiate acquisitions. Again, some landowners may not wish to enter into sale of a strip of their land. There is the question of whether access to them should then be blocked, and how this would be done and enforced, or whether their land should be purchased compulsorily.

### **3.6 Resolutions from Waiheke Community Board 21 June 2007**

At its meeting on 21 June 2007 the Waiheke Community Board resolved:

- A. That the Waiheke Community Board advises that its preference in regard to the accessway west of the junction with Crescent Road East extension is that current landowners be permitted to continue without formal easements, with a view to formalising agreements as properties change hands.
- B. That the affected property owners and residents using the accessway west of the junction with Crescent Road East extension be advised of the implications of formalising easements, including indicative costs, with a view to seeking their feedback on this issue.
- C. That the Waiheke Community Board supports in principle the formalisation of easements for new developments across the accessway west of the junction with Crescent Road East extension.

### **3.7 Discussion of Board resolutions**

The Community Board supports continuing to permit landowners to use the land for private vehicle use and the formalisation of easements for new developments. This is, strictly speaking, contrary to Council's policy for the private use of open space, however it has the advantage of not inconveniencing current users, while at the same time will progressively result in widening the accessway and formalising vehicle usage, although this may take decades.

The board's recommendation in this respect is supported by officers.

However the recommendation to formalise agreements as properties change hands would be difficult to enforce. The only fail-safe way to achieve this would be to place caveats on the titles for the private land, but these would not be approved by Land Information NZ.

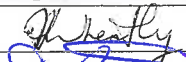


It is recommended that the property files for these properties at ACE be noted with respect to the vehicle access over the Council land not being formalised.

Council officers will present individual reports on each situation where landowners either wish to subdivide or otherwise require formal vehicle access to the Group Manager Arts Community Recreation Policy and the Group Manager Arts Community Recreation Services or the appropriate Council committee or delegation. The agreed monetary value of the exchange / betterment will be reported to the Property Enterprise Board or delegation.

With respect to the board's recommendation that landowners' views be sought on the issue it is considered more appropriate to simply advise the landowners of the situation, in view of the recommendation in this report to let the status quo continue, with easements being formalised for new developments.

### 3.8 Budget Implications

Individual landowners applying for easements will be required to pay all Council processing costs, including staff time, legal, survey, and valuation fees.

	Name and title of signatories	Signature
Author	Helen Wheatley – Property Officer	
Reviewer	Deborah Godinet – Property Development Manager	
Approver	Jaine Lovell-Gadd – Property Group Manager	

STEVE DRAKE - ACTING GROUP MANAGER

Approved:



Allison Dobbie  
Group Manager

Arts Community Recreation Policy



Cameron Parr  
Group Manager

Arts Community Recreation Services